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HUMAN RIGHTS COMMITTEE

Thirty-ninth session

SUMMARY RECORD OF THE 1008th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 27 July 1990, at 10 a.m.

Chairman: Mr. LALLAH

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Annual report of the Committee to the General Assembly through the Economic and Social Council under article 45 of the Covenant and article 6 of the Optional Protocol (continued)

Closure of the session

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GE.90-16909/8129A

The meeting was called to order at 10.40 a.m.

ANNUAL REPORT OF THE COMMITTEE TO THE GENERAL ASSEMBLY THROUGH THE ECONOMIC AND SOCIAL COUNCIL UNDER ARTICLE 45 OF THE COVENANT AND ARTICLE 6 OF THE OPTIONAL PROTOCOL (agenda item 6) (continued)

1. The CHAIRMAN invited the members to resume their consideration of the documents comprising the draft annual report of the Committee.

Document CCPR/C/39/CRP.1/Add.9 (Chapter III. Consideration of reports - Costa Rica)

2. Mr. POCAR (Rapporteur) submitted several amendments to the Committee's attention. In the second sentence of paragraph 3, the word "Political" before the word "Constitution" should be deleted. In paragraph 4, the words "Constitutional Council" should be replaced by "Constitutional Tribunal". In the first sentence of paragraph 25, the word "inappropriate" should be replaced by "illegal". In paragraph 29, the sixth sentence should read: "If an application for registration was rejected, the person concerned had recourse to the remedy of amparo and to a court for administrative matters." In the second sentence of paragraph 36 the words "on the Caribbean Islands" should be replaced by "from the Caribbean Islands". In the third sentence of paragraph 36, the words "National Institute for Indigenous Affairs" should be replaced by "National Commission for Indigenous Affairs".

3. Mrs. HIGGINS noted that the general observations on page 14 did not reflect the concern expressed by some members regarding the requirement for persons wishing to practise journalism in Costa Rica to have a licence. That concern should be mentioned, either in the general observations or in paragraph 29 under the section entitled "Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred".

4. Mr. AGUILAR URBINA agreed that when the State party's report had been considered, several members of the Committee had expressed concern regarding the requirement in question, especially during the discussion of the implementation of the provisions of article 19 of the Covenant. He therefore fully endorsed Mrs. Higgins' proposal.

5. The CHAIRMAN suggested inserting the following sentence in either paragraph 38 or paragraph 19, according to whether the concerns expressed by the members of the Committee had been reflected in the corresponding summary record: "Members expressed concern at the fact that journalists were required to have a licence before being able to work in Costa Rica".

6. Document CCPR/C/39/CRP.1/Add.9, as orally amended, was adopted.

Document CCPR/C/39/CRP.1/Add.14 (Chapter III. Consideration of reports - Viet Nam)

7. Mr. POCAR (Rapporteur) noted that the members' general observations concluding their consideration of the initial report of Viet Nam in the document under consideration were very thorough and detailed. According to the Committee's practice, general observations were not included under a separate heading when the report in question was the State party's initial

report. In 1989 he had proposed a change in that practice, namely the introduction of a section entitled "General observations" in keeping with the procedure for other reports by States parties. However, the members of the Committee had not appeared to be very receptive to that idea, arguing that since the Committee had not used that formula in the past, it would run the risk of introducing unequal treatment among the different initial reports of States parties. However, given the breadth and importance of the general observations on the initial report of Viet Nam, he repeated his proposal, and he also felt that when an initial report was being considered, the Committee should in future present its general observations under a section bearing that title.

8. Mr. DIMITRIJEVIC noted that, in the case of the Viet Nam report, it was imperative to group together the Committee's numerous comments and avoid scattering them throughout the text. He shared Mr. Pocar's opinion, and he believed that in deciding to devote a separate section to general observations the Committee would not be introducing any unequal treatment among the various initial reports but would simply be taking account of the normal development of its work.

9. The CHAIRMAN, pointing out that a special section on general observations had originally been unnecessary since members had not made such observations in the case of initial reports by States parties, said that, nevertheless, grouping the Committee's comments in paragraphs 36-40 of document CCPR/C/39/CRP.1/Add.14 in a separate section entitled "General observations" would highlight those comments and make the text easier to read.

10. Mr. PRADO VALLEJO, Mr. MYULLERSON and Mr. EL-SHAFEI expressed full support for Mr. Pocar's proposal.

11. The CHAIRMAN said that paragraphs 36-40 of document CCPR/C/39/CRP.1/Add.14 would be made into a section entitled "General observations" and that the part of the Committee's annual report that dealt with the consideration of initial reports by States parties would in future be drafted in conformity with that decision.

12. It was so decided.

13. Document CCPR/C/39/CRP.1/Add.14, as orally amended, was adopted.

Document CCPR/C/39/CRP.1/Add.15 (Chapter III. Consideration of reports - Tunisia)

14. Mr. DIMITRIJEVIC drew the members' attention to a drafting problem in the last sentence of paragraph 40, which referred to the "existence" of effective and prompt remedies. It would be more logical in that sentence to speak of the "lack" of effective and prompt remedies.

15. Document CCPR/C/39/CRP.1/Add.15, as orally amended, was adopted.

Document CCPR/C/39/CRP.1/Add.16 (Chapter III. Consideration of reports - Zaire)

16. Document CCPR/C/39/CRP.1/Add.16 was adopted.

READEX

Document CCPR/C/39/CRP.1/Add.17 (Chapter IV. General comments of the Committee)

17. Document CCPR/C/39/CRP.1/Add.17 was adopted without change.

Document CCPR/C/39/CRP.1/Add.18 (Chapter V. Consideration of communications under the Optional Protocol)

18. Mr. POCAR (Rapporteur) noted that the document was available in English only.

19. In paragraph 1, the number of States that had ratified the Covenant should be changed from 91 to 92.

20. After giving much thought to Mrs. Higgins' suggestion at the 1006th meeting concerning where to insert the text concerning measures to follow up the Committee's decisions, he had decided that it would be mentioned in chapter V but that the text would also be reproduced in an annex. In addition, the document on follow-up would be mentioned in the table of contents, along with all the other sections of chapter V.

21. The CHAIRMAN invited the Committee to consider chapter V of the draft report section by section.

Section A (paras. 2-4)

22. Mr. POCAR (Rapporteur) noted that the Committee had to date not yet mentioned in its annual report the communications that the secretariat received but never registered because they were not within the Committee's competence or were too brief. He suggested adding in section A, after paragraph 3, a new paragraph 4 that would read:

> "4. In addition, the secretariat of the Committee has several hundred communications on file in respect of which the authors have been advised that further information would be needed before the communication can be registered for consideration by the Committee. The authors of over 100 further communications have been informed that the Committee does not intend to consider their cases as they fall clearly outside the scope of the Covenant or appear to be unfounded or frivolous."

23. The following paragraphs would be renumbered.

24. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to adopt the new paragraph.

25. It was so decided.

26. Mr. POCAR (Rapporteur) said that the adoption of the new paragraph made it necessary to amend the first sentence of paragraph 3 by replacing the phrase "communications placed before the Human Rights Committee" by "communications registered for consideration by the Human Rights Committee".

27. Section A, as orally amended, was adopted.

Sections B, C and D

28. Sections B, C and D were adopted without change.

Section E

29. The CHAIRMAN asked members wishing to draft an individual opinion concerning communications on which the Committee had recently reached a decision to submit the text to the secretariat as soon as possible for insertion in the report.

30. Mr. POCAR (Rapporteur) said that paragraph 13 should include a reference to two individual opinions in respect of two communications considered at the thirty-seventh session and two individual opinions submitted at the thirty-ninth session.

31. Section E was adopted subject to the addition of a reference to the individual opinions mentioned by the Rapporteur.

Section F

32. Section F was adopted without change.

Section G

33. Mr. POCAR (Rapporteur) drew the Committee's attention to paragraph 21, where reference was made to a communication that the Committee had declared inadmissible on the grounds that the author had no claim under article 2 of the Optional Procotol. On another occasion, however, the Committee had declared inadmissible two very similar communications on the basis not of article 2 of the Optional Protocol but of article 3, a decision which had in fact prompted one member to draft an individual opinion. Needless to say, he did not wish to reopen the substantive debate, but he wondered whether it would not be preferable simply to delete that example - which in any event appeared in an annex - so as not to draw the reader's attention to an apparent inconsistency in the Committee's decisions.

34. Mr. DIMITRIJEVIC said that he was also in favour of deleting paragraph 21.

35. Mrs. HIGGINS said that she did not agree. In her view the communication mentioned in that paragraph provided a very good example of a case of inadmissibility on the basis of article 2 of the Optional Protocol. It would be unfortunate for the Committee not to furnish a perfectly opposite example simply because on another occasion a different decision had been taken on similar cases.

36. The CHAIRMAN and Mr. POCAR, speaking as members of the Committee, said that they were also in favour of retaining the example provided in paragraph 21.

37. Paragraph 21 was retained.

38. Mrs. HIGGINS said she feared that the wording of paragraph 30 might be misconstrued. On the one hand it was stated that the authors claimed to be innocent of the crimes of which they had been convicted and on the other that the Committee, under rule 86 of its rules of procedure, had requested the two States parties concerned not to carry out the death sentences. However, the Committee must avoid giving the impression that it was dealing with the question of the innocence or guilt of the author of a communication and must

also make it clear that it was not only asking for a stay of execution. She therefore proposed adding the following words to the penultimate sentence: "before the Committee has had the opportunity to address such issues as are within its competence".

39. The CHAIRMAN expressed agreement with Mrs. Higgins and said he wondered whether it was really necessary to refer to the authors' allegations that they were innocent. He suggested that the Committee should delete the second sentence in paragraph 30 and amend the penultimate sentence according to Mrs. Higgins suggestion.

40. It was so decided.

41. Mr. POCAR (Rapporteur) proposed to add a further example to the communications mentioned in section G of the document by referring, towards the end of that section, to a communication concerning article 26 of the Covenant, on which the Committee had reached a decision at the close of its thirty-ninth session. Thus a new subsection would be added, entitled: "(h) Equality before the law, principle of non-discrimination (art. 26 of the Covenant)". Existing subsection (h) would become (i).

42. It was so decided.

43. Section G as a whole, as orally amended, was adopted.

Section H

44. Mrs. HIGGINS said she would like to know why section H was entitled "Nature of the Committee's decisions on the merits of a communication", whereas it in fact dealt with measures which the Committee, in the views it adopted on communications, asked States parties to take in order to remedy a situation.

45. Mr. POCAR (Rapporteur) said that the title had been taken from a previous annual report, but that it could be changed.

46. Mrs. HIGGINS proposed that section H should be entitled "Remedies called for under the Committee's views".

47. Section H, as amended by Mrs. Higgins, was adopted.

Section I

48. Mr. POCAR (Rapporteur) drew the attention of the members of the Committee to paragraph 41, which stated that the Committee had adopted measures to follow up the cases it had considered, and which reproduced the text of the measures. In his view it would be preferable to amend paragraph 41 by simply saying that at its thirty-ninth session the Committee had decided to adopt measures to follow up its cases. The text of the measures would be reproduced in an annex to the annual report instead of appearing in paragraph 41.

49. Paragraph 41, as amended by the Rapporteur, was adopted.

50. Section I, subject to the amendment to paragraph 41, was adopted.

Section K

51. Mr. POCAR (Rapporteur), referring to a remark by Mrs. HIGGINS, explained that the section in question should be section J, since it followed section I. He also drew attention to two minor corrections: first, in paragraph 43, the communication in question was No. 188/1984, and not No. 188/1989; second, the reference in brackets at the end of paragraph 45 should be moved to the end of paragraph 44.

52. Section K, relettered I and as amended by the Rapporteur, was adopted.

53. Document CCPR/C/39/CRP.1/Add.18 as a whole (Chapter V. Consideration of communications under the Optional Protocol) was adopted.

Document CCPR/C/39/CRP.1/Add.24 (Annex VIII. Study on possible long-term approaches: comments by the Human Rights Committee)

54. Mr. POCAR (Rapporteur) indicated corrections to be made in the document, which was available in English only. First, in the second paragraph on page 3, to explain what the lists mentioned in the second sentence were, he proposed amending that sentence to read: "It has been the Committee's practice to provide delegations with lists of issues shortly before consideration of the report". Second, in the third paragraph on page 3, he proposed adding a sentence to read: "Ways and means to maximize the impact of such general observations should also be further explored."

55. Document CCPR/C/39/CRP.1/Add.24 (Annex VIII. Study on possible long-term approaches: comments by the Human Rights Committee), as amended by the Rapporteur, was adopted.

56. The CHAIRMAN noted that the Committee had adopted all the documents comprising its draft annual report and that it was thereby adopting paragraph 17 of document CCPR/C/39/CRP.1.

57. Paragraph 17 of document CCPR/C/39/CRP.1 (Chapter I. Organizational and other matters) was adopted.

58. The draft annual report of the Human Rights Committee as a whole (CCPR/C/39/CRP.1 and Add.1-25) was adopted.

59. The CHAIRMAN informed the members of the Committee that, in accordance with their request, he had drafted a letter which he would send in his capacity as Chairman of the Human Rights Committee to the Chairman of the Committee on Conferences and that the text of that letter would be reproduced in the annual report, in the appropriate annex.

CLOSURE OF THE SESSION

60. After thanking the Rapporteur, the members of the Committee, the secretariat staff and the non-governmental organizations that had attended the session, the CHAIRMAN declared the session closed.

The meeting rose at 12.20 p.m.

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HUMAN RIGHTS COMMITTEE

Fortieth session

SUMMARY RECORD OF THE 1009th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 22 October 1990, at 10.30 a.m.

Chairman: Mr. LALLAH

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GE.90-18002/2527B

The meeting was called to order at 10.50 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared open the fortieth session of the Human Rights Committee.

STATEMENT BY THE UNDER-SECRETARY-GENERAL FOR HUMAN RIGHTS

2. Mr. MARTENSON (Under-Secretary-General for Human Rights) invited the Committee, on the occasion of its fortieth session, to reflect on its contribution and that of the other treaty-based expert bodies to the goal of the United Nations to promote and protect human rights. The Secretary-General, in his recently published report on the work of the Organization, had listed as one of the three broad objectives of the United Nations the need to ensure that international affairs were governed by the rule of law and universal respect for human rights. He had stressed the interdependence of the three objectives, pointing out that the resolution of conflicts, observance of human rights and the promotion of development together wove the fabric of peace, which would be unravelled if one of those strands were removed.

3. The international human rights treaty system lay at the core of the Organization's work in the field of human rights and the Human Rights Committee played a central role in that system, a role which would become more important as ratifications increased. One of the remarkable features of the work of the United Nations in the field of human rights was the high standards set by Member States in human rights instruments, but it was clear that it was the expert treaty-monitoring bodies which were responsible for translating abstract international legal norms into concrete respect for the rights of individuals.

4. Expert committees such as the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee against Torture and the Committee on the Elimination of Discrimination against Women periodically reviewed the performance of States parties in carrying out their treaty obligations. Those reviews, during which Governments were questioned on the progress made and obstacles encountered in protecting human rights, made important contributions in helping States identify areas where legislation or practice might fall short of international norms and in encouraging corrective action. Decisions on individual complaints taken principally by the Human Rights Committee often resulted not only in the redress of individual cases, but also in the modification of State law and practice. There was no doubt that the standards in the international treaty system, together with the implementation work of the committees, had had a significant impact on the way people lived throughout the world.

5. The Human Rights Committee had been able to make significant contributions to the implementation of human rights standards through its work under both article 40 of the Covenant and the Optional Protocol thereto, and many of the State party representatives who had appeared before the Committee had expressed special appreciation for its efforts to improve the human rights situation in their own countries. The Committee's work was in fact viewed

with admiration by all knowledgeable observers and it was to be commended for its impressive achievements. The Secretariat would continue to do its best to assist the Committee in carrying out its work even more effectively in the years ahead.

6. Thanks in part to the Committee's valuable efforts, the world had made promising advances in human rights in recent years, particularly in the past year, which had seen so many positive and dramatic developments in the area of civil and political rights. The Secretary-General had noted in his latest report to the General Assembly that human rights had changed from being a subsidiary theme to a dominant concern, and that current experience strongly confirmed that respect for the organs and institutions of the State, national cohesion, the viability of political systems or social ideologies, sustained economic development and the stability of the international order all greatly depended on the observance and promotion of human rights. He had also drawn attention to the resurgent awareness that no social or political dispensation that did not respect the dignity and worth of the human person and the equal rights of men and women and of nations large and small could or should endure. Those observations constituted the clearest expression yet of the high place human rights occupied within the Organization's thinking.

7. The hopeful developments of the past year and the fact that the importance of human rights was receiving greater international recognition should not, however, be allowed to obscure the underlying reality of the era, which continued to be marked by massive and widespread violations of human rights resulting in intense human suffering. The challenge to the international community to promote and ensure respect for human rights was in fact greater than ever.

8. The Centre for Human Rights was seeking, within the means at its disposal, to respond to that continuing challenge as energetically as possible. As well as intensifying its activities in support of the implementation of human rights norms and of efforts aimed at remedying a great variety of actual human rights violations, it was broadening its special focus on information and education and on the provision of advisory services and technical assistance. The General Assembly's decision in 1988 to launch a World Public Information Campaign on Human Rights had greatly enhanced the practical possibilities in the months and years ahead for collaborating with the various United Nations bodies concerned, Member States and non-governmental organizations in an effort to reach out to the various national and local institutions and to the hundreds of millions of individual human beings who needed information about the nature, and even the mere existence, of fundamental human rights.

9. Within the context of the Centre's programme of advisory services and technical assistance, the Asian and Pacific regional workshop on international human rights standards, which had discussed the question of national and regional arrangements, had been held in Manila in May with 35 officials from 23 countries of the region taking part. In June, in co-operation with the Government of Canada, the Centre had organized in Ottawa a workshop on the Optional Protocol, in which several members of the Committee had participated as lecturers. In July, national training courses had been organized on the implementation of human rights and the administration of justice in Montevideo and Asunción respectively. In September, in co-operation with the Government of the USSR, the Centre had organized a European workshop on international

human rights standards in Kiev. He had participated personally in most of those meetings. Before the end of the year, the Centre planned to organize a national workshop in Caracas and was making plans for a regional seminar in Cairo for African countries on the administration of justice and human rights. At all the workshops held, particular attention had been drawn to the Optional Protocol and to the need to submit comprehensive national reports in time.

10. Over the past year, the number of ratifications and accessions to the Covenant and to the Optional Protocol had increased by approximately 10 per cent, from 87 to 93 and from 45 to 51 respectively. The advisory services programme was an important element in those developments, and the Sub-Commission on Prevention of Discrimination and Protection of Minorities had expressed appreciation for it.

11. The Convention on the Rights of the Child, which had been opened for signature only in January 1990, had received the necessary minimum of 20 ratifications by 2 August and had entered into force on 2 September, by far the fastest completion of the ratification procedure for a human rights treaty to date. So far, a total of 120 States had signed the Convention, and 53 of them had also ratified it. The first meeting of States parties to the Convention had been scheduled for 27 February 1991 and the Committee on the Rights of the Child was expected to become operational by the middle of 1991.

12. The Economic and Social Council, at its first regular session in 1990, had taken final action on a question which had been under discussion for a number of years, namely, the enlargement of the membership of the Commission on Human Rights. As of the Commission's forty-eighth session, in 1992, the membership was to be increased from 43 to 53 States; all 10 additional seats had been reserved for countries in Africa, Asia, Latin America and the Caribbean, regions which had for a long time considered themselves to be under-represented. The Council had boosted prospects for computerizing the reporting work of treaty bodies by asking the Secretary-General to include the annual recurrent cost of the computerized system in the Organization's programme budget for the 1992-1993 biennium. As the establishment of that system would depend on States' voluntary contributions, it was not yet possible to forecast when the system would become operational.

13. The fourth session of the Committee on Economic, Social and Cultural Rights had been very productive, as was clear from its annual report. He wished to draw attention to only one element, namely, the views and recommendations contained in the Committee's second general comment. One of the most important features of the general comment was the reaffirmation of the indivisibility of civil and political rights, on the one hand, and economic, social and cultural rights, on the other. The United Nations development agencies were accordingly called upon to do their utmost to ensure that their activities were fully consistent with the enjoyment of civil and political rights.

14. In the view of the Committee, that meant, in negative terms, that the international agencies should scrupulously avoid involvement in projects which, for example, involved the use of forced labour in breach of international standards or promoted or reinforced discrimination against individuals or groups contrary to the provisions of the Covenant, or involved

large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. On the positive side, it meant that wherever possible the agencies should act as advocates of projects and approaches which contributed not only to economic growth or other broadly defined objectives, but also to enhanced enjoyment of the full range of human rights. A letter had subsequently been sent to the heads of all development agencies emphasizing the relationship between development and human rights.

15. The Committee had also noted that many activities undertaken in the past in the name of development had subsequently been recognized as ill-conceived or even counter-productive in terms of their impact on human rights. To avoid such problems in the future, it had been recommended, inter alia, that United Nations development agencies and organs should: specifically recognize the existence of an intimate relationship between development activities and respect for human rights; require that a human rights impact statement be prepared in connection with all major development co-operation activities; include a component dealing with human rights principles and standards in the training courses and briefings provided to personnel employed by United Nations agencies on development projects; and ensure that the rights set forth in the two International Covenants were duly taken into account at each phase of a development project, including the initial assessment of priorities, as well as in the design, implementation and evaluation of projects.

16. In the spring of 1989, he had brought those important views about the relationship between human rights and development to the attention of the Committee of the Whole which had been preparing the International Development Strategy for the Fourth United Nations Development Decade, and as a result the human rights aspects had been reflected in that exercise and in other similar United Nations exercises.

17. Three other bodies whose work was of relevance to the concerns of the Human Rights Committee had recently met in Geneva: the forty-second session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the thirty-eighth session of the Committee on the Elimination of Racial Discrimination; and the fourth session of the Committee against Torture. Information concerning the activities of those bodies would be made available to members of the Committee in the course of the current session.

18. The 3rd meeting of Chairpersons of the human rights treaty bodies had been held in Geneva from 1 to 5 October. It had made a number of important recommendations. First, the consolidated guidelines for the initial part of State party reports under the various treaties, as drawn up in consultation with all the treaty bodies, should be added to the relevant guidelines as soon as possible. Secondly, the manual on reporting, drawn up by UNITAR in co-operation with the Centre for Human Rights and approved by the meeting of Chairpersons on the advice of the Editorial Board, should be published as soon as possible and be widely disseminated. Thirdly, the Secretary-General and the General Assembly should do their utmost to ensure that more resources were provided for Secretariat servicing to enable the treaty bodies to function effectively. Fourthly, steps should be taken to promote greater interaction among the treaty bodies as a means of contributing to the effective development of the human rights treaty system as a whole. To that end, consideration should be given to the appointment of several members of each

Committee, each of whom should be responsible for following developments in one of the other treaty bodies and reporting thereon to his or her own Committee. Other innovative arrangements should also be explored, such as the holding of joint sessions of working groups of two or more Committees to explore a specific issue. Fifthly, in preparing "general comments", "general recommendations" or "suggestions" on topics which were potentially of major relevance to the provisions of an instrument monitored by another body, the Committee concerned should consider undertaking some appropriate form of consultation before finalization of the text in question. Sixthly, the Secretary-General should take appropriate action to institutionalize the meeting of Chairpersons and to ensure that it was held at least once every two years. Seventhly, as far as possible and appropriate, the supervision of new human rights treaty obligations should be entrusted to one or other of the existing treaty bodies. Eighthly, the work of the treaty bodies should be fully reflected in the agenda for the proposed World Conference on Human Rights and the treaty bodies should be consulted, as far as possible, about preparations for such a conference. Ninthly, each United Nations Information Office should, on a routine basis, make available at the national level, and particularly to those sectors with direct responsibility for the implementation of human rights, copies of reports submitted by the State concerned, together with the summary record relating to consideration of those reports. Lastly, in addition to national, regional or subregional training programmes on reporting or other aspects of the implementation of State party obligations under the various human rights instruments, training programmes should be arranged on a regular basis for the officials of United Nations bodies and agencies involved in technical co-operation programmes.

19. The report of the 3rd meeting of Chairpersons would be submitted by the Secretary-General for consideration by the General Assembly at its current session. Members of the Committee would be kept fully informed about future developments relating to the implementation of those conclusions and recommendations.

20. It had recently been confirmed by Headquarters that the Committee's forty-first session, in the spring of 1991, was to be held in New York. That decision did not, however, fully resolve the question of the venue for the Committee's future sessions since the Committee on Conferences had decided to refer to the Sixth Committee the broader question of whether or not General Assembly resolution 40/243, which defined the so-called "Headquarters principle", was applicable to treaty bodies. The matter would be followed very closely and the Committee would be informed of any developments at its next session.

21. As the Secretary-General had stated, human rights was now a dominant concern of the international community in international affairs and the burden of effectively promoting human rights rested even more heavily on the Committee. With each passing year, the importance of the treaty-monitoring bodies for the promotion and protection of human rights would grow, as would the obligation to ensure that those bodies functioned effectively. Attention should therefore focus on the more effective functioning of the treaty system in the future. Such effectiveness should be measured by the impact of the various international norms, as monitored by the various committees, on the way people lived.

22. An important element in improving the efficiency of treaty-based Committees was to provide each body with information on the activities of other United Nations bodies dealing with similar issues. Modest efforts to that end had been made within the Secretariat. He had had a most stimulating and fruitful meeting with the Committee on the Elimination of Racial Discrimination during its most recent session, and had reviewed with them recent developments regarding racial discrimination, including the work carried out within the United Nations. He had also discussed a number of specific matters, such as whether the Committee would wish to identify particular themes and phenomena relevant to its work and propose either further in-depth studies or specific action to the General Assembly, or whether it should bring to the Assembly's attention situations which might cause serious problems in the future, with a view to taking preventive steps. Another question raised had been how the Committee's reports might be organized so as to strengthen its ties with the Assembly.

23. Concerning matters of substance, the question arose how closer relations might be achieved with other bodies dealing with similar issues, such as the Sub-Commission. For example, could the Chairmen of the various bodies prepare succinct reports on their activities and the major themes being dealt with, and could joint meetings on common topics be envisaged? In that respect, both the Committee on the Elimination of Racial Discrimination and the Sub-Commission on Prevention of Discrimination and Protection of Minorities had requested that a one-day joint meeting between them should be organized in 1991. In addition, the Centre had arranged for the Chairman of the Sub-Commission's Working Group on Detention to brief the Committee on Crime Prevention at its most recent session on the Sub-Commission's activities regarding the protection of detainees.

24. Another way of making the work of the treaty bodies more effective with regard to national practice was to make relevant information on those activities easily accessible to decision-makers, advocates and other interested persons at the national level. For example, the analysis of each country's report might be prepared as a separate part of a Committee's overall report to the Assembly. That analysis, together with the country report itself, other relevant information and perhaps the summary records of the Committee's discussion of the report, might be placed together in a single document or publication to provide the authorities and other interested persons in any country with an easy-to-use review of the situation. The main part of the Committee's report to the Assembly might draw attention to overall trends, areas of achievement and matters needing further attention, and also provide detailed information on the meetings and other matters, as was already the case. A system of indexing and cross-referencing appropriate to each treaty might be developed to facilitate the identification of the discussion of similar points in the reports of various countries.

25. A further step in informing decision-makers and others at the national level of the work of the Committees would be to make widely available the general comments and views on individual cases. Various ways might be explored of ensuring the easy availability of those documents, either directly or by ensuring their inclusion in the periodic publications for the legal and other professions in each country. Judges and lawyers from States parties were often not aware of the comments or the final views, and had expressed a

wish to have easy access to them to facilitate their work. A first step might be to make a survey of the availability of those documents to judges and lawyers in States parties.

26. As part of the World Public Information Campaign on Human Rights, various fact sheets had been produced explaining the functioning of the United Nations system. Those were Fact Sheet No. 1 on international machinery, Fact Sheet No. 4 on methods of combating torture and Fact Sheet No. 7 on communications. A fact sheet was currently being prepared on the Committee on the Elimination of Racial Discrimination.

27. In the future, attention would have to be paid to one of the fundamental dilemmas of the treaty system, namely, the fact that, on the one hand, responsibility for implementation was divided among various bodies according to group (women, children, migrant workers) or subject (prevention of discrimination, economic, social and cultural rights, civil and political rights, torture) while, on the other hand, human rights were so deeply interdependent that it was impossible over the long term to understand the enjoyment of one human right without understanding the situation of the other rights and that of the individual concerned. The Committee on Economic, Social and Cultural Rights had done pioneering work in that complex field of interdependence.

28. At its previous session, the Committee had supported the convening of a World Conference on Human Rights and its view had been included in the report of the Secretary-General to the current session of the General Assembly. With the exception of one Government and one non-governmental organization, all the replies received by the Secretary-General had been in favour of the holding of such a conference. The recent favourable changes in international conditions and the new perspectives that had thus been opened up for the protection and promotion of human rights had been underlined in several replies, together with developments and achievements in the United Nations human rights programme over the past 40 years. Many replies had stated that a World Conference should focus on improving international co-operation and strengthening the effectiveness of the United Nations system for the promotion and protection of human rights.

29. As a framework for a World Conference, the following main topics had emerged from the replies: review of progress in the field of human rights throughout the world, particularly with reference to the work of the United Nations; evaluation of the effectiveness of methods and techniques for the protection and promotion of human rights, at the global and regional levels, in particular by the United Nations; and consideration of future action.

30. There had been wide agreement that the success of a World Conference would depend largely on its preparation. Broad consultations had been called for and stress had been laid on the importance of the involvement of expert human rights bodies, the specialized agencies and other organizations dealing with human rights, the academic community and non-governmental organizations in consultative status. Those preparations might lead to the submission of specific recommendations for consideration by a World Conference. The Committee and its members would undoubtedly wish to give their attention to that matter.

31. There was also the problem of providing a more adequate level of financial and human resources to support the operations of the Centre for Human Rights and, in particular, of the treaty bodies. That problem should be seen in the light of the fact that only 0.7 per cent of the global budget was devoted to human rights, which was an issue of growing importance on the international scene. There had been considerable activity during the previous year or so, including the adoption by the General Assembly of resolution 44/135, the adoption by the Commission on Human Rights of resolution 1990/25 and the preparation by the Secretary-General of the report contained in document E/1990/50, all focusing on the need to increase human rights resources. The Economic and Social Council had asked that steps be taken, in both the short and long terms, to assist the Centre in that respect. However, the United Nations was in a difficult financial situation and the Centre would need all its powers of persuasion if it was to be strengthened.

32. At its current session the Committee had a formidable agenda before it. Reports from States parties, which touched on a wide range of economic, social, cultural and historical conditions each presenting its own special challenges to the effective enjoyment of human rights, awaited review and analysis. The Committee would also have to deal with decisions regarding the admissibility or inadmissibility of communications and with final views on some very important cases. In accomplishing those tasks, the Committee could rely on the full co-operation and support of the Secretariat.

33. The CHAIRMAN said that during its discussions the Committee would take up the suggestions made by the Under-Secretary-General, particularly those concerning the co-ordination of its work with that of other human rights bodies. A number of issues considered at the meeting of Chairpersons would be dealt with in due course.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CCPR/C/67)

34. The agenda was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

35. The CHAIRMAN invited the Committee to consider the proposed programme of work, which was before it in an informal document. At the request of the Government of India, the consideration of that country's second periodic report, which had originally been scheduled for the first week of the session, had been moved to the third week so that the State party could be represented at the highest possible level.

36. The programme was flexible and would depend on the progress of the Committee's work.

37. The proposed programme of work was adopted.

38. The CHAIRMAN invited the Chairman/Rapporteur of the Working Group under article 40 to report on the work of the Group.

39. Mr. EL-SHAFEI (Chairman/Rapporteur of the Working Group under article 40) said that the Working Group, consisting of Ms. Chanet, Mr. Cooray, Mr. Wako and himself, had had three tasks before it, the first of which had been the preparation of the draft lists of issues to be taken up in connection with the consideration of the second and third periodic reports of Canada, the second periodic reports of India and Morocco, and the third periodic reports of Spain, the Ukrainian Soviet Socialist Republic and Finland. Prior to consideration of the draft lists of issues by the Group as a whole, its individual members had each been made responsible for preparing one or two lists: Ms. Chanet for the lists relating to the reports of Canada and Spain, Mr. Cooray for the list relating to the report of India, Mr. Wako for the list relating to the report of the Ukrainian Soviet Socialist Republic, and himself for the lists relating to the reports of Morocco and Finland. The draft lists of issues were now before the Committee for consideration.

40. The Working Group's second task had concerned the review of the Committee's procedure under article 40. It had had before it a working document prepared by the Secretariat on the methods of work of the Committee under that article. The document summarized the general exchange of views on the subject at the Committee's 1003rd meeting on 24 July 1990, when note had been taken of the seminar held in Geneva from 13 to 15 July by the Norwegian Institute of Human Rights. The Group would like to submit its specific recommendations and conclusions on the question when the Committee came to consider its methods of work.

41. Thirdly, the Working Group had considered a draft general comment on article 7 of the Covenant prepared by Ms. Chanet to update an earlier text. An exchange of views had been held and some amendments suggested. The Group would complete its consideration of the text during the current session and the Committee might wish to exchange some preliminary views on it if time permitted.

42. The CHAIRMAN said he understood that the Committee would be dealing with the question of its methods of work and with general comments during the current session. He invited the Committee to consider the list of issues to be taken up in connection with the consideration of the second and third periodic reports of Canada, as proposed by the Working Group under article 40 in an informal document.

43. Mr. AGUILAR URBINA, referring to section I of that list of issues (Constitutional and legal framework within which the Covenant is implemented (article 2 (2) and (3)), suggested that paragraph (a) should be redrafted to reflect the fact that two provinces had rejected the Constitutional Accord in question.

44. Mrs. HIGGINS, supporting Mr. Aguilar Urbina's suggestion, proposed that the second sentence of paragraph (a) should be amended to read: "What has been the consequence of the rejection of the Accord by certain provinces?"

45. Mr. EL-SHAFEI supported that amendment.

46. The amendment was adopted.

47. Mrs. HIGGINS pointed out that the third periodic report normally contained a section outlining what action had been taken on providing a constitutional basis for self-government since submission of the second report. She therefore suggested that the first part of section I, paragraph (b), should be amended to read: "What are the latest developments in the effort to reach agreement ...".

48. The CHAIRMAN suggested that a reference might be made to the appropriate paragraph of the third periodic report.

49. It was so agreed.

50. Ms. CHANET considered that since the situation referred to in paragraph (b) was still evolving, the sentence which Mrs. Higgins had mentioned should remain unchanged. She suggested that the words "second periodic report" should merely be replaced by the words "third periodic report".

51. It was so agreed.

52. Section I, as amended, was adopted.

53. Sections II-X were adopted.

54. The CHAIRMAN invited the Committee to consider the list of issues to be taken up in connection with the consideration of the third periodic report of Finland, as proposed by the Working Group under article 40 in an informal document.

55. Sections I-XI were adopted, subject to correction of the spelling of "Aaland Islands" in section II.

56. Mr. POCAR asked why the lists of issues for Finland and Canada did not include a question on the follow-up action which those countries had taken in connection with the Committee's comments on communications received from individuals. The Committee had decided at its previous session that it would ask for information on such action in the list of issues, rather than in a note verbale to the State concerned.

57. The CHAIRMAN said the Secretariat had suggested that the Committee should ask such questions only if they referred to specific communications and specific comments by the Committee. It might, however, be possible to include the question in a new section of the list of issues.

58. Mrs. HIGGINS said that, as she understood it, the decision which the Committee had taken at its previous session had been to ask all States parties routinely about the follow-up action they had taken in connection with any views expressed by the Committee, rather than confining the question to States to which the Committee had actually sent such comments. She agreed that the question should be included in a new section at the end of the list of issues. The Committee might, for example, ask the State party to inform it of action taken in any cases where it had received the Committee's views since the submission of its previous report.

59. The CHAIRMAN suggested that the question might be included under a new section heading entitled: "Information relating to views expressed by the Committee under the Optional Protocol to the Covenant".

60. Mr. EL-SHAFEI said that, in his opinion, any such question would have to refer to a specific case and a specific comment by the Committee. However, representatives of States parties might not be familiar enough with the action taken in specific cases to answer the Committee's questions; moreover, if those questions were to be put at a public meeting, it would be difficult to preserve the confidentiality of the communication. Perhaps the Committee should ask about follow-up action while it was considering the State party's report.

61. The CHAIRMAN pointed out that, according to the decision taken at the previous session, any questions about follow-up action would refer to views which had appeared in the Committee's report and were, accordingly, no longer confidential; the Committee had often asked such questions in the past. The Committee would be guided by the advice of Mr. Fodor, the Special Rapporteur for the follow-up of cases before the Committee. If the Committee had to ask about follow-up action, the question should appear in a separate section at the end of the list of issues.

62. Mr. MYULLERSON said that, since the Committee had taken a decision to ask States parties about their follow-up action, it should implement that decision. However, it did not seem right to ask States parties about follow-up action in cases where the Committee had not actually expressed any views for them to follow up. In the case of Finland, for example, the Committee had not expressed any views on the communications submitted by Finnish citizens, and Finland had, in any case, commented on the action it had taken in its third periodic report. He felt, therefore, that the Committee did not need to ask for further information from the Finnish Government.

63. Mr. PRADO VALLEJO agreed that the Committee must implement the decision it had taken at the previous session, but wondered whether States parties knew about that decision. He agreed with Mrs. Higgins that the question about follow-up action should be addressed routinely to all States parties, but he was afraid that the States submitting reports at the current session might not be in a position to respond.

64. The CHAIRMAN agreed that there was no need to ask Finland about the action it had taken, since that was already covered in the report. It was also true that Canada, the other country concerned, would not have much time to prepare the information requested, and so it might be better not to include the question in the list of issues.

65. Mr. POCAR said that in the past the Committee had included questions about the Optional Protocol in its lists of issues; he did not, therefore, see why it should not ask a question about follow-up action.

66. Ms. CHANET said there was a danger that States parties might refuse to answer questions about follow-up action on the grounds that they did not come under article 40 of the Covenant. She therefore felt that such questions should not be included in the list of issues; if they were, they should be put to all States parties and should not contain any reference to specific cases.

67. The CHAIRMAN said that the Committee's decision to ask about follow-up action had been based on its understanding of article 2 of the Covenant; a statement to that effect would be included in the revised edition of the guidelines for States parties. He suggested that a question on follow-up action should be included in the list of issues in cases where the Committee had expressed views on communications it had received, if it was advised by the Special Rapporteur that no action had been taken. As far as the present session was concerned, he suggested that a question on follow-up action should be included at the end of the list of issues to be taken up in connection with the report of Canada, under the heading: "Views expressed under the Optional Protocol".

68. Mr. MAVROMMATIS said it was important that the Committee should implement the decision it had taken at the previous session. In his view, however, the question on follow-up action should be a general one addressed to all States parties; the Committee might ask, for instance, why the State party had not responded to the Committee's comments.

69. The CHAIRMAN said that, if Mr. Mavrommatis' suggestion was adopted, the Committee would have to study all the files relating to communications very carefully to see whether any reply had been received and, if so, whether it was adequate.

70. Mrs. HIGGINS said that, if the Committee asked a general question, without giving details, about action States parties had taken in relation to its comments, some States parties might be confused. Perhaps the Committee should include a list of the comments it had made and the communications to which they referred.

71. The CHAIRMAN suggested that, as far as the present session was concerned, the Committee should include a question on follow-up action at the end of the list of issues for Canada, but without specifying the communications and comments to which it referred. At future sessions, the Working Group on Communications and the Special Rapporteur would decide on the appropriate formulation for each State party.

72. Mr. POCAR considered that, since the Committee had based its decision to ask questions about follow-up action on article 2 of the Covenant, the question should be included in the section of the list of issues which dealt with that article, namely, section I.

73. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to add a question on follow-up action to section I of the list of issues for Canada.

74. It was so decided.

75. The list of issues to be taken up in connection with the consideration of the second and third periodic reports of Canada (CCPR/C/51/Add.1 and CCPR/C/64/Add.1), as amended, was adopted.

76. The list of issues to be taken up in connection with the consideration of the third periodic report of Finland (CCPR/C/58/Add.5), as amended, was adopted.

77. The CHAIRMAN invited the Committee to consider the list of issues to be taken up in connection with the consideration of the third periodic report of Spain, as proposed by the Working Group under article 40 in an informal document.

78. The list of issues to be taken up in connection with the consideration of the third periodic report of Spain (CCPR/C/58/Add.1 and 3) was adopted.

79. The CHAIRMAN invited the Committee to consider the list of issues to be taken up in connection with the consideration of the third periodic report of the Ukrainian SSR, as proposed by the Working Group in an informal document.

80. Mr. WAKO suggested that in section I the Committee should ask whether the Ukrainian SSR was considering acceding to the Optional Protocol to the Covenant.

81. The CHAIRMAN said there were many problems connected with a request of that kind and suggested that the issue should be deferred until the discussion on the Committee's methods of work.

82. It was so decided.

83. The list of issues to be taken up in connection with the consideration of the third periodic report of the Ukrainian SSR (CCPR/C/58/Add.8) was adopted.

84. The CHAIRMAN invited the Committee to consider the list of issues to be taken up in connection with the consideration of the second periodic report of India, as proposed by the Working Group in an informal document.

85. The list of issues to be taken up in connection with the consideration of the second periodic report of India (CCPR/C/37/Add.13) was adopted.

86. The CHAIRMAN invited the Committee to consider the list of issues to be taken up in connection with the consideration of the second periodic report of Morocco, as proposed by the Working Group in an informal document.

87. Mrs. HIGGINS, referring to the second sentence of paragraph (a) of section V on the right to life, suggested that the Committee should simply ask for information regarding general comment No. 6 (16), particularly paragraphs 6 and 7 thereof, as it applied to the case of Morocco, instead of asking what was Morocco's position regarding that comment.

88. The CHAIRMAN and Mr. EL-SHAFEI agreed with the suggestion made by Mrs. Higgins.

89. The list of issues to be taken up in connection with the consideration of the second periodic report of Morocco (CCPR/C/42/Add.10), as amended, was adopted.

90. The CHAIRMAN thanked Mr. El-Shafei for the useful work done on the list of issues and invited Mr. Myullerson to report briefly on the activities of the Working Group on Communications.

91. Mr. MYULLERSON said that the Working Group on Communications, consisting of Mr. Dimitrijevic, Mr. Ndiaye, Mr. Prado Vallejo, Mr. Wennergren and himself, had held five meetings in the previous week, during which it had had to review 16 draft recommendations and draft decisions concerning 17 communications. It had adopted two recommendations on final views, declared three communications admissible, adopted six recommendations to declare communications inadmissible and decided to defer consideration of one communication pending further clarification by the State party and the author concerned. It had also decided to defer consideration of two communications until the Committee's following session. He requested the Chairman to grant the Working Group additional time to enable it to deal with three more communications.

92. It was so agreed.

The meeting rose at 12.40 p.m.

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HUMAN RIGHTS COMMITTEE

Fortieth session

SUMMARY RECORD OF THE 1010th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 23 October 1990, at 10 a.m.

Chairman: Mr. LALLAH

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Consideration of reports submitted by States parties under article 40 of the Covenant

Canada

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GE.90-18081/2531B

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4)

Second and third periodic reports of Canada (CCPR/C/51/Add.1 and CCPR/C/64/Add.1)

1. At the invitation of the Chairman, Mr. Shannon, Mr. Dubois, Mr. Kessel, Mr. Cloutier, Mr. Low, Ms. Weiser, Mr. Lapierre, Ms. Whitaker and Mr. Lafleur (Canada) took seats at the Committee table.

2. Mr. SHANNON (Canada), introducing the second and third periodic reports of Canada (CCPR/C/51/Add.1 and CCPR/C/64/Add.1), stressed the importance of the International Covenant on Civil and Political Rights in delineating basic human rights values and the Committee's contribution in interpreting those values. Canada treated its obligations under the Covenant very seriously, using it as a guide in the development of domestic laws, administrative procedures and judicial interpretation.

3. Under the Canadian Constitution, legislative authority for the implementation of the Covenant's various provisions was shared between the Federal, provincial and territorial Governments. Thus, extensive consultations had been necessary between all levels of government prior to Canada's accession to the Covenant and meetings continued to be held regularly in order to facilitate compliance with its provisions. Canadian delegations generally included provincial representatives so as to promote a first-hand dialogue on aspects of the Covenant which fell within provincial legislative authority.

4. The Canadian Charter of Rights and Freedoms, federal and provincial Human Rights Acts, and other legislation guaranteed and protected the fundamental values delineated in international human rights instruments, including the Covenant. Moreover, Canada had put into place the necessary mechanisms to ensure that those values were upheld. Canadians had effective domestic remedies for the assertion of the rights and freedoms reflected in the Covenant, and a substantial volume of litigation had taken place under the Charter of Rights and Freedoms. Since the adoption of the Charter in 1982, there had been no fewer than 10,000 court cases in which the Charter had been invoked and several thousand judicial decisions.

5. Canada also had a vigorously independent and impartial judiciary, unrestricted access to the courts, and financial assistance programmes for persons or groups involved in various forms of litigation before the courts. Supplemental complaints procedures were also available in the form of federal, provincial and territorial human rights commissions and police commissions. The Optional Protocol to the Covenant provided yet another form of recourse.

6. The Meech Lake Accord had not been ratified by the requisite number of provinces and therefore the process of constitutional reform was currently stalled. However, the commitment to that reform remained and initiatives to encourage a national dialogue on that fundamental issue were currently under consideration.

7. Recent government inquiries and jurisprudence had resulted in the adoption of strong anti-discrimination measures, particularly in areas where discrimination or unfairness was reflected in subtle or indirect ways. One example was the Supreme Court of Canada's judgement in Alberta Human Rights Commission versus Central Alberta Dairy Pool, rendered on 13 September 1990, a case concerning the legality of adverse-effect, or systemic, discrimination, in other words an apparently neutral rule which had the unintended effect of disadvantaging a person or group. The Court had held that where a neutral rule resulted in adverse-effect discrimination, an employer was obliged to take steps to accommodate the employee adversely affected, except where that would cost the employer undue hardship. In the particular circumstances of that case, the Court had ruled that the employer was obliged to accommodate the complainant who, as a member of the World-Wide Church of God, could not work on certain days of the year.

8. In its decision on that case, the Supreme Court of Canada had also stated that its previous judgement in Bhinder v. Canadian National Railways had been incorrect in so far as it related to adverse-effect discrimination. Mr. Bhinder had subsequently submitted a communication under the Optional Protocol. In the Bhinder case, the Supreme Court of Canada had ruled that a Sikh, who was required by his faith to wear a turban, could be fired for refusing to wear a hard hat on the job site as prescribed by safety regulations. In the Alberta Dairy Pool case, the Supreme Court had said that in cases like the Bhinder case, an employer must accommodate an employee who was adversely affected, unless it caused the employer undue hardship.

9. A review of the impact of the Alberta Dairy Pool decision was currently under way and various measures consistent with that approach had already been taken. The Federal Government had recently amended the regulations governing the Royal Canadian Mounted Police (RCMP) to exempt on the ground of religious belief an officer from wearing any part of what was called the "significant uniform" of the force. That amendment permitted a practising Sikh to wear a turban instead of the required uniform headgear.

10. A second instance in which stronger anti-discrimination measures had been taken was the report of the Royal Commission on the Donald Marshall Jr. Prosecution Inquiry. The Royal Commission had been established by the Province of Nova Scotia in October 1986 to inquire into the circumstances that had led to the wrongful murder conviction of Donald Marshall Jr., a Micmac Indian. Mr. Marshall had spent 11 years in prison until 1982, when his case had been reopened. He had subsequently been acquitted. The Royal Commission's report had clearly indicated the need to re-examine the impact of the criminal justice system on indigenous people and visible minorities, and the need to improve the fairness of the criminal justice system for those groups.

11. The Royal Commission had made 82 recommendations, each of which had been addressed by the Federal and provincial Governments. In addition to the sum of money he had already received for his wrongful conviction, substantial compensation had been awarded to Mr. Marshall and his parents. Of particular importance were measures that had been taken in the context of the criminal justice system to prevent such events from recurring. Those measures included: the establishment of a regular forum, between the Federal Government, the Government of Nova Scotia and native associations, for consultations on aboriginal criminal justice issues and other issues of common

concern; the establishment of a national recruiting team to increase the representation in the RCMP of indigenous people and visible minorities; and the development of educational programmes for judges, police and lawyers to encourage sensitivity to minority concerns.

12. In addition, the Government of Nova Scotia had appointed a Director of Public Prosecutions to ensure that all Nova Scotians, regardless of influence, race, gender or political affiliation, were dealt with fairly. A Court Structure Task Force had also been established to make the court system more accessible, understandable and efficient, as well as a Task Force on Municipal Police Training.

13. In Ontario, a reassessment of the policing system had also taken place, although as a result of different events. In June 1990, the Government of Ontario had passed an Act to revise the Police Act and amend the law relating to police services. That Act required increased minimum educational standards for police officer candidates and "affirmative action" plans to hire women, members of racial minorities, persons with disabilities and aboriginals. It had also established a mandatory system for dealing with public complaints and a special investigation unit of the Ministry of the Solicitor General to investigate police conduct and lay charges where appropriate.

14. In Quebec, an Act respecting Police Organization and Amending the Police Act and Various Legislation had been passed on 23 December 1988. That Act provided a code of ethics for all police officers and established a Commissioner of Police Ethics. It also provided for ethics committees, police training mechanisms and a Tribunal of Police Ethics, which acted as a Board of Appeal.

15. In addition, the National Assembly of Quebec had adopted in 1989 a law modifying an Act to Amend the Charter of Human Rights and Freedoms concerning the Commission and Establishing the Tribunal des Droits de la Personne. That law permitted the Human Rights Commission to bring to the Tribunal those cases that had not been settled amicably or by arbitration. Judgements of that Tribunal were final.

16. Recent well-publicized events at Oka, Quebec, involving Mohawk Indians had underlined the critical importance of addressing aboriginal issues in Canada effectively and in an open and constructive manner. The Oka situation had a long and complex history which he had recently outlined at a meeting of the United Nations Working Group on Indigenous Populations (WGIP). There had been many efforts to find a negotiated peaceful solution. By 8 August 1990, the Federal Government had purchased the land which had originally been at issue and reiterated its readiness to address the legitimate concerns of Mohawks at Oka and Kahnawake, once normal conditions had been restored.

17. On 29 August 1990, the first barricades had come down following an agreement between the Canadian forces and Mohawks at Kahnawake. By 26 September 1990, the remaining group of armed warriors at Oka had decided to lay down their weapons and place themselves in the custody of the military. Charges had been laid and were proceeding in the ordinary courts. Discussions had subsequently started between the Federal Government, the Government of Quebec and Mohawks at Kanesatake to deal with the transfer of land, unification of the community, and social and economic considerations.

18. Canada on its own initiative had maintained regular contact with the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Chairman of the WGIP and the Under-Secretary-General regarding the situation at Oka, Kanesatake and Kahnawake. The Chairman of the Sub-Commission had indicated that by taking that initiative Canada had set a precedent that should be followed by others.

19. For the residents of those communities, both native and non-native, and for Canadian society as a whole, the experience had been difficult and had created hardships. It had demonstrated the threat that violence could pose for fundamental rights, but it had also shown the ability of Canadian institutions to meet such a test of human rights and to bring about a peaceful solution.

20. Important indigenous issues clearly needed to be resolved in Canada. The Prime Minister, on 25 September 1990, had announced a government strategy to preserve the special place of indigenous peoples, based on the aboriginal and treaty rights contained in the Canadian Constitution. That strategy was based on four main pillars, namely, the acceleration of land-claims settlements, the improvement of economic and social conditions on reserves, legislative changes regarding the relationship between aboriginal peoples and governments, and concerns of Canada's aboriginal peoples in contemporary Canadian life.

21. Several long-standing initiatives concerning indigenous peoples were under way. Following a decision by the Committee in the Lovelace case, the Indian Act had been amended to remove discriminatory provisions. Since 1985, the Canadian Government had pursued a policy of aboriginal self-government. Negotiations involving legislative changes were being conducted with a number of communities and other initiatives were being taken to increase community control and local decision-making. Progress had been made in the area of comprehensive land claims.

22. Significant developments in respect of aboriginal issues had also taken place on the judicial front. In the case of R. v. Sparrow, the Supreme Court of Canada had clarified the meaning and application of section 35 of the Constitution Act, 1982, which recognized and affirmed existing aboriginal and treaty rights. The Court had stated that those rights must be interpreted in a liberal fashion and had imposed strict requirements on governments in respect of regulatory measures which might affect the exercise of aboriginal rights. On fishing, which had been the subject matter of that case, the Court had stated that after conservation and resource management concerns had been addressed, first priority must be given to indigenous food fishing and fishing for aboriginal ceremonial purposes.

23. On 22 September 1988, the Prime Minister had outlined the contents of an Agreement to provide redress to Canadians of Japanese ancestry for injustices they had suffered during and after the Second World War. As symbolic redress for those injustices, $21,000 was being given to each individual who, during that period, had been subjected to internment, relocation, deportation, loss of property or otherwise deprived of the full enjoyment of fundamental rights and freedoms. As of 31 March 1990, the Government had received approximately 18,000 applications for individual redress and had processed 15,000 of them. In addition, $12 million had been given by the Federal Government to the Japanese Canadian community, through the National Association of Japanese Canadians, to undertake activities or programmes that contributed to the

well-being of the community or promoted human rights. Other initiatives included the granting of Canadian citizenship to persons of Japanese ancestry still living who had been expelled from Canada or had had their citizenship revoked during the Second World War.

24. In connection with the Japanese Canadian Redress Agreement, legislation had also been adopted to establish a Canadian Race Relations Foundation, with a $24 million endowment. The purpose of that Foundation was to serve as a national resource for community groups, researchers and the general public in order to further understanding of racism and racial discrimination in Canadian society and to develop effective policies and programmes in the area of race relations.

25. On 1 January 1989, changes to the Immigration Act had entered into force, thereby establishing a new system for the determination of refugee claims made under the United Nations Convention relating to the Status of Refugees. An important feature of that new system was its essentially non-adversarial character, which encouraged claimants fully to submit the facts in support of their claim. While that legislation was still in its infancy, his Government was satisfied that it met the standards of the Convention and the Covenant.

26. The Canadian Charter of Rights and Freedoms had been significantly influenced by and in many ways reflected the Covenant. The Supreme Court of Canada had itself emphasized that point in its judgements. Section 15 of the Charter guaranteed the right of equality and the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. On 2 February 1989, the Supreme Court had handed down its first major decision on the interpretation of that section. A British subject permanently resident in Canada, Mr. Andrews, had been denied admission to the British Columbia bar by virtue of a law which had made Canadian citizenship a prerequisite. The Supreme Court had held that prerequisite to be discriminatory, and in that and subsequent cases had developed a number of important principles regarding the interpretation of the Charter's guarantee of equality. First, the Court had held that the guarantee against discrimination had not been restricted to the grounds expressly enumerated in section 15, but could encompass any ground that involved a personal characteristic and was analogous to the enumerated grounds. Therefore, in the Andrews case, the Court had held that citizenship, a non-enumerated ground, was a prohibited basis of discrimination. The Court had also said that section 15 prohibited discrimination even where there was no intent to discriminate, such as in the case of systemic discrimination. That important decision confirmed a constitutional entitlement to equality that was as broad in its scope and application as article 26 of the Covenant.

27. Freedom of religion was also guaranteed in the Charter in section 2 (d). The Supreme Court had said that that freedom meant more than just the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom of religion meant that, subject to certain necessary limitations, no one was to be forced to act in a way contrary to his or her beliefs or conscience. Thus, the federal Lord's Day Act, which had precluded stores from opening on Sundays and had been explicitly based on the tenets of the Christian faith, had been struck down as contrary to the guarantee of freedom of religion.

28. His Government had established a unique $13 million Court Challenges Programme to promote human rights by clarifying equality rights and language rights as guaranteed in the Canadian Constitution. The Programme, which had an annual budget of $2,750,000, provided financial assistance to disadvantaged groups and persons who wished to challenge government policies, practices and legislation that might be contrary to the Charter's guarantee of equality or minority language rights. The administration of the Programme had been entrusted to the Human Rights Research and Education Centre of the University of Ottawa, which made funding decisions on an independent basis. The Programme, which had been renewed the previous spring for another five-year period, reflected the Government's strong belief in supporting and fully defining those important rights.

29. In conclusion, he wished to underline the seriousness with which his Government assumed its obligations under the Covenant. Significant efforts were made to inform the Canadian public about Canada's international commitments. Its reports to international monitoring bodies, such as the Committee, were published and distributed throughout the country.

List of issues to be taken up in connection with the consideration of the second and third periodic reports of Canada (CCPR/C/51/Add.1 and CCPR/C/64/Add.1)

30. The CHAIRMAN thanked the representative of Canada for his introduction and for his review of developments in many important fields since the submission of Canada's third periodic report. He invited the representative of Canada to respond to section I of the list of issues.

I. Constitutional and legal framework within which the Covenant is implemented (article 2 (2) and (3))

31. Mr. SHANNON (Canada), responding to question (a) concerning the current situation in respect of the 1987 Constitutional Accord relating to Quebec, said that that Accord had not entered into force because it had not been ratified by all the provinces within the time-limit fixed by the Constitution. The process of constitutional reform had thus been stalled, but commitment to that reform remained and initiatives to encourage national dialogue on that issue were under consideration. The future of Canada's constitutional development concerned all Canadians, who counted on their Government to create the kind of broad national consensus that would permit further evolution. The situation in that respect would have to be assessed over the coming years and further information provided to the Committee at a future date.

32. In response to question (b), he said that there had been no further progress since submission of the third report in the effort to reach agreement on providing a constitutional basis for self-government by aboriginal groups. The first amendment to Canada's new Constitution had arisen out of a series of constitutional conferences on aboriginal matters, where self-government had been the dominant issue. Unfortunately, the proposals put forward for constitutional recognition of the right of aboriginal self-government within the context of the Canadian Federation had not attracted sufficient support to result in a constitutional amendment. On 3 June 1987, his Government had signed the Meech Lake Accord, which provided that aboriginal rights would not be affected by the distinct society clause. The companion constitutional

resolution of 9 June 1990 provided for a separate constitutional process on matters of interest to aboriginal people. While the failure of the Meech Lake Accord had stalled progress on constitutional reform, the Federal Government remained firmly committed to bringing about aboriginal self-government. It intended to work with aboriginal people within the existing constitutional framework in order to realize their aspirations for more autonomy and control over matters affecting their lives.

33. In reply to question (c) on the respective roles of regular courts, ombudsmen, the Canadian Human Rights Commission and Human Rights Tribunals in responding to human rights complaints, he said that the Canadian courts had broad authority under the Canadian Charter of Rights and Freedoms to provide a remedy to any person whose rights had been infringed. Pursuant to section 24 of the Charter, the courts had the authority to provide any remedy they considered just and appropriate. In civil cases, that authority extended to granting a declaration of invalidity of laws and to providing injunctions or other orders prohibiting or requiring action by other courts or government authorities.

34. In the context of equality rights, the courts had the authority to extend government benefit programmes to non-eligible persons, which raised very difficult questions about the respective responsibilities of different branches of Government. However, significant questions concerning the remedial authority of the court remained to be resolved in future cases and further dialogue with the Committee would be needed as the law evolved.

35. In criminal law, the courts had the authority, under section 24, to refuse to admit evidence that might have been obtained in connection with an infringement of the Charter. They could dismiss charges that might have been initiated or they could quash a conviction in any case where a violation of the Charter might be found. Under section 52 of the Constitutional Act of 1982, any law that was inconsistent with the Constitution, including the Charter, was without force or effect. Pursuant to section 32 of the Charter, the constitutional protection of human rights was restricted to government actions and therefore to disputes between private parties and the State. For protection as between private parties, other remedies were available. Under the Canadian Human Rights Act, any individual or group who had reasonable grounds to believe that a person had engaged or was engaging in discrimination contrary to the Act might file a complaint of discrimination with the Canadian Human Rights Commission. Although its members were appointed by the Government, the Commission operated on an independent basis. It appointed an investigator from among its staff to inquire into any given complaint. The investigator reported back to the Commission, which might dismiss the complaint, appoint a conciliator or refer the complaint to a Human Rights Tribunal. The Commission thus operated at that stage of the proceedings as an investigative and screening body.

36. Once the Commission decided to refer a case to a Human Rights Tribunal, the case must be heard by a Tribunal. It was the President of the Human Rights Tribunal Panel, an independent official, who selected the members of the Tribunal that was to hear a specific case for the Panel. The purpose of having a separate official to select the members of each Tribunal was to ensure its independence and impartiality.

37. The Human Rights Tribunal adjudicated the complaint of discrimination. It functioned in much the same way as a court, although its rules were rather more informal. The Tribunal usually held a public hearing at which the complainant and the alleged discriminator presented witnesses and evidence. The Canadian Human Rights Commission was entitled to appear before the Tribunal and was required to adopt such a position as, in its opinion, was in the public interest. In practice, the Commission usually carried the case of the complainant and made representations on his behalf. After the hearing, the Tribunal might order a variety of remedies, including cease and desist orders, compensation, reinstatement, and the adoption of new policies and practices. Tribunal orders could be registered in the Federal Court of Canada and were then enforceable as a court order. Non-compliance with such an order was punishable as contempt of court. Tribunal decisions could be reviewed through an application to the Federal Court of Appeal, which could uphold, overrule or change them. Decisions of the Federal Court of Appeal could be appealed against to the Supreme Court of Canada. Decisions of the Human Rights Commission to dismiss a complaint or refer it to a Human Rights Tribunal could also be challenged on limited grounds in the Federal Court of Canada.

38. In answer to question (d) concerning follow-up action on views adopted by the Committee under the Optional Protocol, his Government believed that it had taken effective action in integrating into domestic policy the views that the Committee had adopted under the Optional Protocol. A prime example had been the Government's response to the views of the Committee in the Lovelace case. After the Committee had decided that the provisions of the Indian Act, which deprived of Indian status any Indian woman who married a non-Indian, were discriminatory and conflicted with article 27 of the Covenant, the Government had amended that Act to provide for the granting or reinstatement of Indian status to such women and their children, as well as to other groups. Some 76,000 persons had since acquired Indian status as a result of that amendment. That increase in the number of Indians was affecting current and future demands on budgets, programmes and services, and an evaluation of its consequences would soon be presented to the Canadian Parliament.

39. In addition, following the May 1990 decision concerning the Lubicon Lake Band, the Minister of Indian and Northern Affairs had said that the findings of the Committee had confirmed the Canadian Government's opinion that it had an obligation to the Lubicons which must be settled. The Minister had further noted that the United Nations c dered the Canadian Government's efforts at negotiation an appropriate remedy o meet that obligation. The Government's offer to the Band would grant it the disputed land, provide it with $45 million to meet the social and economic needs of the community, and allow it to continue to pursue its claims in the courts for additional financial compensation. The Lubicon leadership had so far refused that offer. In May and September 1990, private discussions had been held between representatives of the Canadian and Albertan Governments and the Band's solicitor concerning prospects for acceptance of the offer by the Lubicons and the possibility for arbitration on outstanding issues. The Governments were awaiting a response from the Band.

40. The CHAIRMAN said that while the Committee would understand that, in accordance with previous practice, the replies to some questions might be reserved, it nevertheless hoped that the Canadian delegation would find it possible to answer all other questions which did not cause too much difficulty or require consultation.

41. Ms. CHANET expressed appreciation for the information provided by Canada on its application of the Optional Protocol and on the Bhinder and Lovelace cases, which had led to legislative changes. Such information clearly demonstrated the way in which Canada viewed its obligations under the Covenant.

42. Referring to paragraph 127 of the second periodic report (CCPR/C/51/Add.1), she was particularly concerned to know how being established by law, the Human Rights Tribunal Panel could be impartial and meet the requirements of article 14 of the Covenant. Who chose the president who would be responsible for selecting and appointing Tribunals to adjudicate human rights complaints? Given their composition and constitution, she doubted very much whether such Tribunals could meet the requirements of impartiality.

43. In view of the statement that sections 66 and 67 of the Human Rights Act did not apply to Yukon and the Northwest Territories, she wondered whether that meant that people living in those Territories had no access to the Human Rights Commission and that human rights legislation did not apply to the Indians there.

44. Mr. MAVROMMATIS said that the two Canadian reports were extremely satisfactory in that they contained a wealth of material, including information on recent decisions following the adoption of the Charter; the introductory statement too, added considerably to the written information and would greatly facilitate the Committee's work. The human rights seminar which had been held in June 1990 in Ottawa had been one of the most successful he had ever attended. It had been well organized and was an example to the organizers of subsequent seminars, particularly since it had been limited to one item which participants had been able to discuss in depth.

45. Turning to the general information in the second report, he welcomed the adoption of the Canadian Charter of Rights and Freedoms but had been unable to understand why it was necessary for the Federal Minister of Justice to report on any inconsistencies between Canadian legislation and the Charter. Was it perhaps because of the general provision in section 52 of the Constitution Act of 1982, which rendered any law inconsistent with the Constitution, including the Charter, of no force and effect, as stated in paragraph 13 of the second report? It was surprising that no comparative study had been carried out before the adoption of the Charter or at least that the Charter itself contained no provision which brought existing laws into line with the Charter.

46. As far as the implementation of article 1 was concerned, the very laconic sentence making up paragraph 12 was unsatisfactory; much more information on both internal and external difficulties might have been expected.

47. Lastly, he wondered why, with the exception of Newfoundland, political opinion was not one of the prohibited grounds for discriminatory treatment.

48. Mr. AGUILAR URBINA said that the two Canadian reports provided an excellent and balanced outline of the legal situation concerning human rights in Canada, and the manner in which the law was applied. He endorsed the comment made by Mr. Mavrommatis regarding paragraph 12 in the second report (CCPR/5/51/Add.1) and suggested that more comprehensive information, particularly regarding the Oka situation, which had been touched upon in the introductory statement, should be provided.

49. Information was also lacking on the Human Rights Tribunal Panel referred to in paragraph 127 of the same report, and he wished to know to which State authority it was responsible, and whether its decisions were final and binding on public and private institutions as well as on individuals, or whether they could be appealed against, and, if so, to which higher authority?

50. He also wondered whether or not the Canadian Human Rights Commission referred complaints to the Tribunal. Judging by the report, the latter appeared to be a preliminary body which referred complaints to a higher authority. He was also not clear about the relationship between the Commission and the Tribunal, and asked whether one was answerable to the other. In addition, could a decision not to set up a Tribunal be appealed against, and if so to which authority? Who appointed the Commission and to whom was it answerable? Who appointed the President of the Human Rights Tribunal Panel and could he be a member of a Tribunal as well? And how was the independence of the two bodies guaranteed?

51. More information would also be welcome on the concept of reasonable accommodation referred to in paragraph 128 of the second report. Paragraphs 182-184 of the same report referred to the British Columbia Council of Human Rights, and the questions he had asked about the Canadian Human Rights Tribunal Panel applied equally to that Council.

52. The last sentence of paragraph 317 of the same report implied that there was legislation which infringed the Covenant. He wondered what legislation that was and what measures had been taken to redress the situation.

53. Mr. MYULLERSON said that the Canadian report was one of the most thorough and comprehensive yet submitted and provided a full picture of the civil and political rights situation in Canada. It was also very valuable for the information it had included regarding legislation and judicial and administrative practices. He wondered, however, whether there was any conflict between federal and provincial legislation and, if so, how such conflict was settled. And why had article 33 been included in the Canadian Charter of Rights and Freedoms and might not its provisions lead to a breach of the Covenant?

54. Lastly, the provisions of section 10 of Bill No. 178 of Quebec and the provisions of section 2 (b) and section 50 of the Constitutional Act 1982 also required clarification in the light of articles 3 and 10 of the Charter of Human Rights and Freedoms, given that the differences between those instruments could result in a breach of the Covenant.

55. Mr. PRADO VALLEJO said that the two reports reflected Canada's concern to comply as fully as possible with the Committee's guidelines regarding the form and contents of reports. Canada was well known for providing sufficient guarantees for the proper recognition of human rights and for its protection and enforcement of those rights, and while the country clearly had some difficulties, it should be remembered that no country in the world was without its human rights problems, particularly where indigenous communities were concerned.

56. Canada had two very good legislative instruments in its Charter of Rights and Freedoms and its Human Rights Act, but he wondered whether those

instruments were fully compatible in the light of the guarantees laid down in the Covenant and whether all the rights set forth in the Covenant had been included in them.

57. He also wondered whether Canada had completed its consideration of the question whether political belief should be added to prohibited grounds of discrimination, particularly in the light of article 2 of the Covenant. As that article prohibited discrimination on the grounds of political opinion, there was no justification for any discrimination in the legislation of States parties, which had a duty to harmonize their national legislation with the Covenant.

58. Some clarification was also needed as to the status of provincial legislation vis-à-vis the Covenant and vis-à-vis the provisions contained in Canada's Human Rights Act and its Charter of Rights and Freedoms. Which provisions had precedence and how would a conflict be settled? Lastly, were there any differences between decisions taken pursuant to provincial or national norms.

59. Mr. ANDO expressed appreciation for the frankness of the report and introductory statement. He had recently seen for himself how the differences in Canadian society made it very difficult for the country to comply with all international human rights standards.

60. Like Mr. Myullerson, he was concerned about the relationship between federal and provincial legislation, although it appeared from the reports that almost all the articles of the Covenant were reflected in both provincial and federal legislation. If that were so, was there a procedure whereby a federal or provincial government body or individual could question the conformity of federal or provincial legislation with the Covenant, and would a decision be sufficient to annul the legislation or would a parliamentary amendment be required?

61. Mr. COORAY associated himself with the views and questions put forward by previous speakers. The issue of self-government as referred to in paragraph 10 of the second periodic report and paragraph 63 of the third periodic report had not yet been raised. He wished to know to what extent the concept of aboriginal self-government included the right of aboriginal peoples to internal self-determination, including their right freely to choose their own domestic and political institutions and form of government, and freely to pursue their economic, social and cultural development, as referred to in article 35 of Canada's Charter of Rights and Freedoms.

62. Mr. EL-SHAFEI welcomed the lucid introduction of the reports and particularly the updating of the review of constitutional and legal developments. A wide range of issues had been covered, demonstrating considerable progress, but the third report (CCPR/C/64/Add.1) would have been more informative and more useful to the Committee if it had referred to the difficulties encountered in ensuring the enjoyment of the rights enumerated in the Covenant by all persons under the jurisdiction of the federal and provincial authorities, including such vulnerable groups as the minorities, aboriginal peoples, aliens, refugees and prisoners.

63. While section 1 of the Charter of Rights of Freedoms provided for rights of all types, as enumerated in the Covenant, there were limitations on those rights at both the federal and provincial levels resulting in a conflict of interests. In such cases, therefore, he wondered who decided what was reasonable and justifiable and whether the limitations put the vulnerable groups at a disadvantage

64. Mr. WENNERGREN commended the second and third periodic reports, which were helpful to the Committee in its efforts to understand the legal system in Canada. He expressed appreciation to the leader of the Canadian delegation for his comprehensive introductory statement.

65. It was stated in paragraph 12 of the second periodic report that Canada subscribed to the principles set forth in article 1 of the Covenant, but under the heading "Provincial governments" there was nothing to show that all provinces and territories similarly subscribed to those principles. He asked whether there were any that did not, and if so in what respects. It appeared from the addendum to the initial report that there was no judicial or governmental body at the provincial, territorial or federal level with overall responsibility for protection of the rights and freedoms recognized under the Covenant, although reference was made to the courts, the departments of justice, health and welfare and labour, the human rights commissions and the Interdepartmental Committee on Human Rights. He would be interested to know whether there had been any further developments since the submission of the addendum to the initial report, and what the federal Government could do to overcome the difficulties if any province was unwilling to subscribe to all the principles of the Covenant.

66. Mrs. HIGGINS also expressed appreciation to the leader of the Canadian delegation for his helpful introductory statement. While commending the detailed reports with their excellent references to the pertinent case law, as well as the annexes, she nevertheless shared the sense of disappointment at the failure to mention any problems encountered in certain areas. It would have been helpful for the Committee to learn of any such difficulties and of the Government's position in that regard.

67. She had been unable fully to understand the answers to questions raised on section 33 of the Canadian Charter of Rights and Freedoms during the examination of the initial report. It had been suggested that that section was of little concern in practice since, the Quebec Charter of Human Rights and Freedoms for example, contained equivalent provisions to those in the Canadian Charter. If that was so, she was somewhat puzzled as to why the suspension provisions in the Canadian Charter had to be relied upon if what was being suspended was in any event part of the Quebec provisions. If section 33 was really a hidden derogation provision, there were some difficulties in that it had none of the qualifications for a derogation provision as to the subject matter of the articles being qualified with a prohibition. If, on the other hand, it was a case of failure generally to guarantee the rights in question, why was it still considered necessary? She would appreciate some elucidation on the role that section 33 was thought to play in the provision of human rights.

68. Mr. WAKO commended the Canadian representative on his extremely useful and informative introductory statement. The reports complied with the Committee's guidelines. He hoped that during the discussion it would be possible to go further into any difficulties experienced in implementing the rights provided for in the Covenant.

69. He associated himself with the comments of previous speakers in relation to article 1 of the Covenant. The question of Indian indigenous communities had been dealt with in both the second and third periodic reports under article 27 of the Covenant, but both reports went beyond that article to touch on economic development strategy and ways of enabling the indigenous communities to participate in the political and economic structures. He would like to know more about the question raised by Mr. Cooray concerning the extent of the internal self-government and self-determination proposals being negotiated with the 161 Indian communities in March 1990, the total number of Indian communities and the content of the proposals with respect to the human rights provisions under the Covenant. It had been asked who was responsible for tribes at the federal and provincial levels. He would also like to know more about responsibility for the self-government proposals being negotiated. Canada's experience in that connection might usefully be shared with other countries, and he would like to hear more about the relationship of article 27 with article 1 in so far as Canada was concerned. He asked whether the indigenous communities in Canada were recognized as a people, and if not why not. He associated himself with other speakers' comments relating to article 33.

70. Mr. LOW (Canada) said that it was somewhat difficult to group questions for an immediate response but he would provide answers to questions that could be dealt with at once and elaborate later on points requiring further explanation.

71. Ms. Chanet had asked how the Human Rights Tribunal Panel could be impartial and independent. Information had also been sought on the relationship between the Panel and the Human Rights Commission. His Government had gone to some lengths to ensure the total impartiality and independence of the Human Rights Tribunals. The Human Rights Commission served as an initial investigation, conciliation and clarification mechanism in which the parties were given an opportunity to make submissions; the Commission then decided whether or not the case should be referred to a Tribunal. Once such a decision was made, the matter was in the hands of the Human Rights Tribunal Panel, whose Chairman was physically and economically separate from the Commission itself and was responsible for selecting from members of the Panel the people who would serve as members of the Tribunal or judges of the particular case. The President of the Panel might himself serve, but his duties were to arrange for the orderly transaction of the business of the Tribunals by the various members of the Panel. The Panels were selected on a case-by-case basis and were independent of the Human Rights Commission and the Government and, of course, of the complainant.

72. A further question concerned the application of the Canadian Human Rights Act to Indian people. The relevant provision of that Act applied only to the Indian Act. Section 67 of the Human Rights Act stated that nothing in that Act affected any provision of the Indian Act or any provision made under or pursuant to that Act. It was concerned with the composition of Indian bands and action in that regard, but Indian people could clearly invoke the

jurisdiction of the Canadian Human Rights Commission and the Tribunal system. In a case decided upon in February 1990, when the complainants had claimed that they had been discriminated against by denial of access of their children to a particular school and that the discrimination was a matter of marital status or sex, the Tribunal had found that the complaint was valid and that the children should have been registered in the school concerned.

73. A further question related to the powers of the Human Rights Tribunal Panel. Once a case was committed to a Tribunal, the latter had authority to give a binding decision as between the parties. Such decisions were subject to judicial review in the Federal Court of Appeal or, in the case of a single-person Tribunal, a review of the entire case could be held by a three-person Tribunal. If the Human Rights Commission decided not to refer a case to a Tribunal, that decision could be appealed against and was subject to judicial review again in the Federal Court of Appeal. The guarantee of independence of the Tribunals was a matter of concern to the legislature and arrangements had been made to dissociate the administration of the Tribunal and panel members from the Commission, which until recently had provided all the material support for the panel and selected the members of the Tribunal. The entire structure of the Tribunal process was under consideration as part of an ongoing overall review of the Canadian Human Rights Act.

74. A question had been raised concerning the application of the Human Rights Act to the Yukon and Northwest Territories. That Act no longer applied to the Yukon, since that territory had adopted its own human rights code and arranged for people to refer complaints for decision in the territory. In the Northwest Territories, there was as yet no provincial legislation providing for the kind of remedies available under the Human Rights Act, which continued to apply to there.

75. It had also been asked why it was necessary for the Minister of Justice to report to Parliament on legislative initiatives that might conflict with the Charter of Rights and Freedoms. All the legislation had in fact been reviewed and found to be in compliance with it. Review of the legislation was carried out on the basis of an understanding of the Charter, which was in a state of evolution and continuously being interpreted, so that the appreciation of its precise meaning and application evolved with time. There was therefore a continuing need to keep the legislation under review and that was being done intensively at all levels. The purpose of the report by the Minister of Justice was to prevent the Government of the day from bringing in legislation that the Minister of Justice deemed to be incompatible with the Charter. The Minister's position had to be made known to the House of Commons in such a case. Such reporting was also an obligation under the Canadian Bill of Rights.

76. With regard to the Human Rights Act, the question of reasonable accommodation had been the subject of a recent decision by the Supreme Court. The Court had concluded that it was not sufficient simply to have a good reason for discriminating. In the case of Mr. Bhinder, in which there had been a reasonable explanation of the need to apply the hard-hat rule to a person whose religion required him to wear a turban, the Court had ruled that it was incumbent upon the employer or provider of goods and services to do everything possible to meet the person's particular problem by considering the possibility of employing him on similar terms and conditions in a different area of the work place, where a safety helmet was not required. Similarly,

the provider of goods and services in a more recent decision of the Supreme Court was required to see whether other arrangements could be made to enable the person concerned to be employed or to have access to goods and services available to other Canadians. The requirement to do everything possible to enable the person to participate in employment or access to goods and services must in such cases be subject to a balancing test to see whether it would cause undue hardship, cost or inconvenience to the employer. The Federal Government had therefore undertaken, in response to a parliamentary committee on equality rights in 1985, to add the concept of reasonable accommodation to the Canadian Human Rights Act.

77. On the question of political or other opinions, the Federal Government had undertaken to consider whether or not the question of such opinions should be added to the Canadian Human Rights Act as a prohibited ground of discrimination. In the case of employment in the civil service, the federal public service and provincial public services, there was a well-defined and carefully protected safeguard against improper treatment of an employee of the State on grounds of political opinion. Under the Public Service Employment Act, public servants were prohibited from taking part in political activities but were employed exclusively on merit and without regard to political opinion. There were, however, some small politically-appointed staffs who were required to assist Ministers and were selected for their political capacity. In the province of Prince Edward Island, which had adopted protection against discrimination on the ground of political opinion, considerable difficulty had been experienced because the provincial court had been unable to understand how the provision could be applied. Reference had been made to the provincial Court of Appeal and subsequent to the Court's conclusion that it could not see how to apply the provision in the circumstances in question, the provincial Government had undertaken to consider the question further with a view to legislating, but the matter was still under consideration at the federal level.

78. A number of questions had been raised concerning the legislative arrangements in Canada for implementing the obligations under the Covenant in the area of civil and political rights. Each level of government acting pursuant to its legislative authority was supreme, subject to the Canadian Charter of Rights and Freedoms and to cases in which there might be overlapping, for example, between the federal legislative authority in relation to the criminal law and criminal procedure, on the one hand, and the provincial legislative authority over the administration of justice, on the other. In the case of conflict in those areas, the federal law would be paramount. In the case of any conflict in the area of implementation of the Covenant between the federal and provincial legislative power, the federal legislation would similarly prevail. In Canada, international obligations and treaties that might affect private rights and obligations were not self-executing but required domestic legislative action in order to be given effect. Each level of government - federal and provincial - must therefore act to ensure the full implementation of all the rights guaranteed by the Covenant in order for those rights to have effect at the domestic level. As a consequence, both levels of government would have something to say about how they had acted to implement the obligations of the Covenant.

79. It was critically important to have continuing co-ordination and consultation among the various levels of government in order to ensure that the international obligations accepted by ratification of the Covenant would be implemented. Such implementation was not static. It was not enough simply to pass a statute or endow an administrative body with authority to implement the obligations of the Covenant. There had to be a continued development of understanding of the precise implications of the Charter obligations and their application to everyday situations, in which some guidance was received from the Committee in its commentaries on his Government's reports. In ratifying the Covenant, governments had assumed a political commitment to take the measures required to bring their laws and practices into conformity with that instrument. A committee of federal, provincial and territorial officials met twice yearly, as did the federal, provincial and territorial Ministers responsible for human rights, in order to supervise the implementation of Canada's obligations under the Covenant and the other human rights treaties it had ratified.

80. When referring to political opinion, he had omitted to mention that section 15 of the Charter, which prohibited discrimination on a number of grounds, was not exhaustive or restricted in its protection to the grounds enumerated in that section. The Supreme Court of Canada had made that clear in a case concerning inequality on the basis of citizenship, which was not referred to in section 15. Thus, in an appropriate case where prejudice or pejorative discrimination could be established on political grounds, there might be a remedy pursuant to section 15.

81. Mr. Prado Vallejo had asked whether all the rights enshrined in the Covenant were guaranteed in the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights. In fact, those two instruments did not guarantee all the rights enshrined in the Covenant, because the legislative process concerned was a very complicated one and it had been necessary to make a number of political and linguistic compromises. In some cases, such as that of section 15 of the Charter, the Canadian legislators had felt it necessary to enumerate all the rights to which the section referred where the equivalent article of the Covenant (art. 26) did not do so. Canada was reluctant to amend the Constitution itself which, it felt, laid down a minimum set of rights which governments could implement by a variety of other measures.

82. Some members had commented on the "laconic" account of Canada's implementation of article 1 of the Covenant. However, that issue had been adequately dealt with in Canada's initial report (CCPR/C/1/Add.43, Vols.I and II) and the supplementary information submitted with it (CCPR/C/1/Add.62). It was true that his Government could have updated the information provided in the early reports, and he would report that suggestion to his Government. He nevertheless felt that there were a number of other sources from which the Committee could have obtained the information requested.

83. In reply to Mr. El-Shafei's question about section 1 of the Charter, he said that it was for the courts to decide whether it was permissible to limit the rights enshrined in the Charter. If an individual could demonstrate that the laws or actions of the Government infringed his rights under the Charter, then the Government was obliged to prove that such a restriction was compatible with section 1 of the Charter. Supreme Court rulings in such cases (e.g. the case of R. v. Oakes - see document CCPR/C/51/Add.1, para.8) had obliged the Government to prove, first, that its objective was important enough to justify interference with an individual's rights and freedoms, and

secondly, that the means used to achieve that objective infringed the individual's rights as little as possible, were clearly related to the achievement of the objective and did not have an unnecessarily harsh effect on the individual.

84. The report gave several examples of the way in which section 1 of the Charter was invoked in the courts. In one case, a citizen had invoked section 1 in order to contest a court ruling that he should not disseminate propaganda, claiming that the ruling infringed his freedom of expression (CCPR/C/64/Add.1, para.5). The case, along with three others, was currently being considered by the Canadian Supreme Court, which was expected to reach a decision by the end of the year. In all cases where the Government sought to reconcile the rights of an individual with the rights of others or of society as a whole, it was the courts which decided whether it had acted appropriately.

85. The CHAIRMAN noted that the representative of Canada had referred to the possibility of a "judicial review" by the Federal Court of Appeal of decisions of the Human Rights Tribunal Panel. Was that a judicial review in the technical sense, namely, a review of the legal issues involved, rather than a review of the substance of the case?

86. Mr. LOW (Canada) said that a judicial review covered only the legal issues involved in a particular case. The only exception was a case which had been tried by a single-person Tribunal, which might subsequently be referred to a tribunal of three judges. Canada felt that such a procedure was justifiable because it was rapid and informal, and because the Human Rights Tribunal Panel was made up of very experienced lawyers. However, the procedure was currently under review and changes might be made.

87. Mr. WAKO noted that one of the Canadian representatives, Mr. Lapierre, was described as the Director-General of the Citizens' Participation Branch of the Department of the Secretary of State. What was the "Citizens' Participation Branch" and what did it do?

88. Mr. LAPIERRE (Canada) said that the Citizens' Participation Branch sought to protect the rights of the individual by helping federal, provisional and territorial governments to implement the international treaties to which Canada was a party, preparing for the ratification of new instruments, such as the Convention on the Rights of the Child, and supporting action by non-governmental organizations to promote a greater awareness of human rights; it was also responsible for the Court Challenges Programme. The Citizens' Participation Branch also promoted voluntary action by private enterprises, charities, all levels of government and the federal ministries, and was responsible for exchange programmes for young people between the various Canadian provinces.

II. State of emergency (article 4)

89. Mr. SHANNON (Canada), referring to the question why the protections in section 4 (b) of the new Emergencies Act appeared to be restricted to Canadian citizens and permanent residents, said that section 4 (b) prohibited the detention of individuals on the basis of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability. The provision was intended to prevent the repetition of incidents which had occurred during the Second World War when Canadian citizens of Japanese descent had been detained solely on the grounds of their ethnic origin. However, section 4 (b)

was subject to the guarantees of the Canadian Charter of Human Rights and the Canadian Bill of Rights, and his Government therefore considered that it was consistent with article 4 (1) of the Covenant.

90. Mr. PRADO VALLEJO asked whether the Emergencies Act had been invoked during the protests by indigenous groups in the summer of 1990 and, if so, whether it had been invoked in full or in part. The Act appeared to be confined to Canadian citizens or permanent residents; did it also apply to non-permanent residents?

91. The second periodic report stated that, under the Emergencies Act, the adoption of emergency measures was subject to the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights, but not to the Covenant (see document CCPR/C/51/Add.1, para.16, and CCPR/C/64/Add.1, para.4). Were the relevant provisions of the Charter and the Bill consistent with article 4 of the Covenant?

92. Mr. AGUILAR URBINA said it would seem from paragraph 9 of the second periodic report, that the non obstante clause provided for in section 33 of the Canadian Charter of Rights and Freedoms could be invoked to allow certain fundamental rights, including the right to life, to be disregarded. In what circumstances might the right to life be involved, what were the further implications of the non obstante clause, and how could such procedures be reconciled with article 4 of the Covenant?

93. The representative of Canada had referred to the adoption of the Emergencies Act. However, during the protests by indigenous groups near Montreal in the summer of 1990, the Government had invoked not the Emergencies Act, but the National Defence Act. What were the relevant provisions of that Act, which rights had been suspended, and was that suspension consistent with article 4 of the Covenant?

94. Paragraph 229 of the second periodic report (CCPR/C/51/Add.1) referred to the extraordinary power of the Government of Manitoba Province to suspend various rights. What other extraordinary powers did the Government possess?

95. Paragraph 230 of the second periodic report referred to the Defamation Act in Manitoba Province, which restricted an individual's ability to defame other persons. However, that implied that a right to defame others did exist in certain circumstances, which was not the case in most countries. He would welcome further information on that point.

96. Paragraph 259 of the report referred to the Emergency Measures Act as it applied to Manitoba Province. Which rights could be suspended under that Act, and was the suspension always consistent with article 4 of the Covenant?

97. Mr. DIMITRIJEVIC thanked the representatives of Canada for their detailed and well organized report; he particularly appreciated the many references to the decisions taken by Canada's courts.

98. He shared Mr. Aguilar Urbina's concern about the non obstante clause provided for in section 33 of the Canadian Charter of Rights and Freedoms, which permitted infringements of fundamental rights in certain circumstances (see document CCPR/C/51/Add.1, para. 9). The strict guidelines laid down by the Quebec Court of Appeal, which were quoted in the report, did not fully reassure him, since some of the rights concerned - including the right to life

and the right to freedom of conscience - were ones which should not be suspended in any circumstances. Other rights could be suspended only after a state of emergency had been formally declared and notified to the Secretary-General of the United Nations, a step which did not seem to be provided for in section 33. If Canada really intended section 33 to cover the suspension of non-derogable rights and the suspension of rights without a formal declaration of a state of emergency, it should have lodged a reservation to that effect on its accession to the Covenant. He would like to know if there had been any recent changes to the legislation governing the non obstante clause, or any attempt to evaluate the extent to which section 33 of the Charter complied with Canada's obligations under international instruments.

99. Mr. NDIAYE said that the Emergencies Act prohibited detention on a number of named grounds (race, national or ethnic origin, colour, religion, sex, age or mental or physical disability). Were any other grounds accepted in practice?

The meeting rose at 1 p.m.

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HUMAN RIGHTS COMMITTEE

Fortieth session

SUMMARY RECORD OF THE 1011th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 23 October 1990, at 3 p.m.

Chairman: Mr. LALLAH

later: Mr. DIMITRIJEVIC

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Canada (continued)

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

SECOND AND THIRD PERIODIC REPORTS OF CANADA (CCPR/C/51/Add.1 and CCPR/C/64/Add.1)

1. Mr. LOW (Canada), replying to questions regarding the events of the summer, said that the Emergencies Act had not been applied on that occasion: action had been taken under the National Defence Act, which authorized military intervention to assist the civil authority in restoring order. No rights, therefore, had been suspended and any individuals who considered that the police had infringed their basic rights had had access to the Canadian courts.

2. In response to questions regarding the apparent limitation on some of the rights of Canadian citizens and permanent residents due to the Emergencies Act, he said that in Canada individuals who were neither Canadian citizens nor permanent residents could appeal under articles 9 and 15 of the Canadian Charter of Rights and Freedoms.

3. In general terms Mr. Low understood the Committee's concern regarding the scope of article 33 of the Charter in respect of the right to life and the way in which that right could be suspended. Although it must be considered absolute, its possible future application also had to be borne in mind in such contexts as abortion, euthanasia, organ transplants, etc., which required careful thought and the adoption of a more finely balanced approach. The possibility of departures from the principle could therefore not be totally excluded, although that did not mean that they could be admissible in situations of the kind considered by the Committee. In conclusion, the concern expressed by the Committee would be drawn to the attention of the Canadian authorities.

4. The CHAIRMAN invited the Canadian delegation to reply to the questions in section III of the list.

> "III. Non-discrimination and equality of the sexes (arts. 2 (1), 3 and 26)
>
> (a) Please clarify the references in section 6 of the Charter to 'mobility rights' and why such rights are guaranteed only to Canadian citizens. (See para. 6 of the second periodic report.)
>
> (b) Did the recent review of the Canadian Human Rights Act give rise to any proposals to amend federal legislation? (See para. 40 of the third periodic report.)"

5. Mr. DUBOIS (Canada) said, with regard to "mobility rights", that, in accordance with a judgement by the Supreme Court of Canada, section 6 of the Canadian Charter applied to Canadian citizens and to permanent residents, whatever their nationality. The purpose of section 6 was to guarantee freedom of movement. "Mobility rights" were covered by general legislation which made no discrimination on the basis of province of origin and did not require

residence as a condition of eligibility for social services. Rights restricted to Canadian citizens concerned only one of the attributes of citizenship, namely the right to enter, stay in and/or leave Canada.

6. In reply to question III (b), he said that the Government was currently undertaking a comprehensive review of the Canadian Human Rights Act: its scope, grounds for discrimination, the nature of the agencies responsible and the procedures to be applied. The review had not yet been completed, but the Minister of Justice had announced his intention to bring in amendments as soon as possible.

7. Ms. CHANET noted that article 67 of the Canadian Human Rights Act stated that the Act did not affect the Indian Act. She therefore asked whether Indians could invoke both the Human Rights Act and the Indian Act, given that the latter, which was extremely important in that it regulated the whole of their lives, made no mention of the rights declared in the Human Rights Act. If they could not, they would be at a disadvantage in relation to the rest of the Canadian population.

8. On the question of mobility rights, Mrs. HIGGINS asked whether the right to leave a country, including one's own, which she was aware existed in practice in Canada, was laid down in the Constitution.

9. Turning to the question of immigration and, specifically, article 26 of the Covenant, she said that, although the Covenant did not speak of the right to immigration or even the right to asylum, the general comments approved by the Committee (15 [27]) clearly showed that States parties had the obligation to guarantee the rights referred to in the Covenant to "all individuals within its territory and subject to its jurisdiction" and therefore, in principle, to asylum-seekers so placed. It was of course well known that Canada currently faced considerable problems in that connection, but the report was silent on the point and it would be good to be provided with more details on the matter.

10. The problems confronting that State party where asylum-seekers were treated very generously and authorized to live on its territory but where, by reason of that very generosity, files accumulated and were examined only after long delays, raised the question of equality before the law and entitlement without any discrimination to the equal protection of the law, laid down in article 26 of the Covenant. It appeared that the Government periodically tried to establish priorities for processing cases, dealing first with people from regions where the situation was particularly difficult. In such cases the files were examined by special authorization of the Minister and not under the slower procedure laid down by the 1951 Convention relating to the Status of Refugees. The different procedure sometimes led to distinctions being made between individuals from the same country of origin, depending on when they had arrived in Canada. Thus, a Sri Lankan Tamil arriving in January 1989 would have had his fate decided during the course of the year, because at the time his case had been considered high priority, while another Sri Lankan Tamil who had arrived earlier might still have a long time to wait. She further noted that the Immigration Department also gave priority to asylum-seekers from English-speaking countries, taking the view that their cases could be processed more quickly, which meant that files were not processed in order of arrival. While distinctions based on objective criteria could be permitted and the granting of priority to persons whose life was in

particular danger was perfectly admissible, that was not true in the case of priority accorded in consideration of the language spoken by the asylum-seeker.

11. Mr. DIMITRIJEVIC shared the concern expressed by Mrs. Higgins. In his opinion, an explanation of the backlog of cases under consideration, which was mainly accounted for by those seeking the right of asylum, should be required under the terms of article 26, since the right of asylum was not among the rights recognized by the Covenant. The Committee's position was that article 26 covered all the rights and advantages accorded to everyone, without discrimination, including foreigners. He would like the representative of Canada to give him confirmation, in regard to asylum-seekers and refugees, that measures or precautions were taken to avoid any discrimination on the grounds enumerated in article 26.

12. Referring to the language situation in the country, he noted that the Canadian Charter of Rights and Freedoms referred mainly to English and French, the official languages of the country. However, according to article 22 of the Charter, other languages besides English and French retained some rights and privileges. He therefore asked what those rights and privileges were, what exactly was meant by "official language", and to what extent Indians could use their language to communicate with the authorities. It would also be interesting to know whether there were any newspapers, magazines or books published in languages other than English and French, and how many.

13. Finally, Mr. Dimitrijevic said that in reading the reports of some non-governmental organizations he had been struck by the fact that in a country as vast as Canada there was only one penitentiary for women, which meant that all the female offenders in the country were placed in that establishment and some were consequently very far away from their usual place of residence. Since they might also belong to particular ethnic groups, that represented an additional hardship to which men were not subjected, and constituted discrimination against the women. What was the exact position?

14. Mr. EL SHAFEI observing that the list of measures taken to guarantee non-discrimination was not exhaustive, asked whether any additions had been made to those measures as a result of judicial decisions or legislation, and to what other rights they had been extended.

15. With regard to paragraph 36 of the third periodic report, which referred to a case in which the Federal Court of Appeal had decided that provisions of the Unemployment Insurance Act discriminated on the basis of marital or family status and had held that the Canadian Human Rights Act had primacy over other federal legislation, he asked whether measures had been taken to amend the Unemployment Insurance Act so as to eliminate such discrimination.

16. Mr. MAVROMMATIS said that the heavy backlog in considering the cases of asylum-seekers could in itself, in some cases, constitute cruel treatment. He was fully aware that Canada had a very generous policy with regard to refugees and the very fact that the number of accumulated files amounted to tens of thousands showed that it was considered a hospitable country. It was none the less the case that Canada certainly possessed the means to speed up the formalities and that, while taking measures to help refugees who were victims of torture, it should also consider the distress of genuine political refugees forced to wait a long time before being told whether they had been granted asylum.

17. In reply to the questions on the application of the Human Rights Act and the Indian Act, Mr. LOW (Canada) said that the former dealt exclusively with discrimination and was not concerned with the basic rights recognized by the Covenant. Article 67 of the Act should be interpreted in that context. If aboriginals could claim that they were victims of discrimination because of certain measures taken by the State, other Canadians could also complain of discrimination when advantages were accorded exclusively to Indians, as happened, for example, in the case of measures to assist with post-secondary education for aboriginals. The provisions of article 67 of the Human Rights Act were intended to prevent the special measures taken on behalf of Indians from being denounced as dsicriminatory because they did not apply to all Canadians. The Act was in any case currently undergoing a comprehensive review, on the completion of which the necessary changes would be made.

18. With regard to the problem of refugees, it should first be noted that it was one to which the Canadian Government was paying very close attention. The 1951 Convention relating to the Status of Refugees expressly imposed on States parties obligations with regard to not returning refugees. Moreover, detailed discussion was currently in progress at the HCR on the measures to be taken regarding persons who could not be considered as refugees under the terms of the 1951 Convention. He believed it necessary to maintain the position adopted in the Vienna Convention on the Law of Treaties, according to which the 1951 Convention and the Covenant must be considered jointly, since, although each of those instruments had its own special place, they complemented and reinforced each other.

19. Concerning the backlog in examining cases, it should be borne in mind that the Canadian Government's position was complicated by the very large number of people already in Canada and seeking to remain, whether they were genuine political refugees or economic or other refugees who had fled from undoubtedly harsh conditions and deserved compassion. While he did not mean to imply that people in the latter category were responsible for the backlog, it must be recognized that the large number of cases slowed down a procedure in which each case was considered individually to determine whether the asylum-seeker met the required conditions for obtaining the status applied for. The number of admissions was high in Canada because of its flexibility in applying the criteria used for determining whether the conditions required by the 1951 Convention were met. The Government was doing its utmost to process quickly and without discrimination the cases of thousands of refugees who, for their part, were trying by all the means at their disposal to get themselves admitted or to prolong their stay in Canada.

20. The Committee would recall that the concept of discrimination implicit in his general remarks on article 26 connoted a lack of rationality in the way in which decisions were taken by the authorities. He did not know the exact reason which had led the authorities to give priority to English-speaking immigrants; perhaps it was easier and quicker to deal with applications from people whose cases had been held up when a decision could be taken without recourse to the services of an interpreter. Actually, very few people came into that category. But in any case the Committee should not consider that the Government was exercising discrimination by proceeding in such a way, because it was in fact attempting to deal as fast and as effectively as possible with the situation of many people who were meanwhile living, working and in some cases receiving social welfare benefits in Canada.

21. In reply to the questions regarding official languages, he said that an Act of 1988 amending the 1969 legislation had added some constitutional guarantees in that area. "Official language" meant a language which allowed members of Canadian society to deal with the entire machinery of the State, including the judicial system, to receive services in the language of their choice and, for civil servants, also to work in the language of their choice. At the same time, the Government was committed to promoting the use by linguistic minorities of their own languages. With regard to indigenous languages, only the Northwest Territories had adopted legislation giving official language status not only to English and to French but also to six indigenous languages.

22. On the question of the single federal penitentiary for women which had aroused Mr. Dimitrijevic's concern, he said that only women sentenced to more than two years' imprisonment were committed to a penitentiary. The others were held in one of the many establishments administered by the provinces. The Federal Government had very recently announced the forthcoming closure of the women's prison and the construction of about five regional establishments.

23. As Mr. El Shafei had pointed out, the list of grounds of discrimination given in the Canadian Charter of Rights and Freedoms was not exhaustive; however, the Federal Government believed that article 15 of the Charter was sufficiently broad to cover any other grounds of discrimination not expressly mentioned. Moreover, case-law included several lower court decisions evidencing the recognition of other grounds of discrimination.

24. With regard to the Unemployment Insurance Act, it had in fact been judged discriminatory by a Human Rights Tribunal. That judgement had been confirmed by the Federal Court of Appeal, which had ruled that the Tribunal had the power to order that the provision judged discriminatory should not be applied, even though the instrument concerned had been adopted by Parliament. Other provisions of the same Act had also been judged discriminatory and at the beginning of 1989 a bill had been tabled in Parliament to enable those flaws to be eliminated. Unfortunately, the bill was currently held up in the Senate.

25. The CHAIRMAN invited the Canadian delegation to reply to the questions in section IV of the list of issues.

> "IV. Right to life (art. 6)
>
> In light of the defeat in the House of Commons of a motion to reinstate capital punishment, are there any prospects for the early ratification by Canada of the Second Optional Protocol, aiming at the abolition of the death penalty?"

26. Mr. DUBOIS (Canada) said that Canada had voted in favour of the adoption of the Second Optional Protocol at the General Assembly, seeing it as providing an option for States which might wish to accede to it. Capital punishment had been abolished in Canada, except for certain offences which came under the National Defence Act. The competent authorities were currently giving careful joint consideration to the Second Optional Protocol and the National Defence Act, with a view to possible accession. No decision had been taken to date.

27. Mr. MAVROMMATIS noted that the motion to reinstate capital punishment had indeed been defeated in Canada, but only by a very narrow majority. That reflected a trend which had been noted in a large number of countries. The Committee ought to have asked the Canadian delegation whether the Government intended to do away with the restrictions on the abolition of the death penalty which were based on considerations of national defence.

28. The CHAIRMAN invited the Canadian delegation to reply to each of the six questions in section V of the list of issues, which related to the liberty and security of the person (arts. 7, 9, 10 and 11):

> "V. (a) Please clarify the grounds for imposing an indeterminate sentence of detention and how the maximum length of such a sentence is related to the maximum fixed term established for a given offence under the Criminal Code. (See paras. 24 and 30 of the second periodic report.)"

29. Mr. DUBOIS (Canada) said that the clause of the Criminal Code under which an interdeterminate sentence of detention was imposed on a person considered a "dangerous offender" applied only to persons found guilty of a serious personal injury offence. Moreover, the prosecution had to convince the court that the offence with which the accused was charged was part of a pattern of generally violent, aggressive or brutal behaviour or failure to control sexual impulses. It also had to be established that there was every probability of the incident being repeated. The Supreme Court of Canada had decided that the clause was compatible with the guarantees in the Canadian Charter of Rights and Freedoms against cruel and unusual treatment or punishment.

> "V. (b) Are there any maximum limits on the length of pre-trial detention? What is the average length of pre-trial detention and how much variation is there in this regard among the various provinces?"

30. Mr. DUBOIS (Canada) said that the Charter of Rights and Freedoms guaranteed the individual a number of legal safeguards, particularly in article 11 (e), under which "[a]ny person charged with an offence has the right not to be denied reasonable bail without just cause". The guarantee was supplemented by section 503 (1) of the Criminal Code, under which a detained person must be brought before a justice within 24 hours; if that was not possible, the detention must be authorized by a judicial decision as soon as possible. Judges were obliged to release an accused person whose detention could not be justified. If it was decided to detain the accused, a prosecutor or the accused could ask the judge to review the decision. Extremely strict time-limits for reviewing decisions were fixed in each case, to prevent arbitrary detention. If the judge considered that continued detention could not be justified he was obliged to order the release of the accused or issue directives for the trial to take place as soon as possible. Finally, the period of pre-trial detention was always deducted from the sentence. The average duration of pre-trial detention varied from province to province, ranging from an average of 3 days in Nova Scotia to 20 days in the Northwest Territories.

> "V. (c) Please clarify the reference to 'specified restrictions' on the right of detainees to apply for a writ of habeas corpus in Section 708 of the Criminal Code. (See para. 37 of the second periodic report.)"

31. Mr. DUBOIS (Canada) emphasized that the conditions for applying for a writ of habeas corpus in no way limited its effectiveness. The petitioner had first to prove that he actually was under detention and secondly to establish probable grounds for his claim that his detention was illegal. A writ of habeas corpus could be applied for only on material grounds: the person concerned had to be in custody; mere restriction of freedom - for example, release on bail - gave no right to habeas corpus. Finally, the applicant could not demand an assessment of the evidence; the grounds for the application had to be an error or a total lack of evidence.

> "V. (d) With reference to paragraph 221 of the third periodic report, please clarify the current practice of the Yukon Government of incarcerating individuals who are unable to pay fines and whether there is any maximum limit to the length of such incarceration."

32. Mr. DUBOIS (Canada) stated that, although it remained a statutory option, the incarceration of fine-defaulters was no longer imposed by the Yukon courts. The last such case had occurred in October 1989. The procedure had been abolished in practice because it was fundamentally unfair to certain racial and socio-economic groups, particularly aboriginals. The Government had tried to set up programmes for alternatives to incarceration in cases of payment default, but unfortunately the courts did not make sufficient use of those options. However, the Yukon courts set relatively long-term fine repayment conditions.

> "V. (e) At what age is a youthful offender considered to be a juvenile delinquent under Canadian law? Is there an age below which pre-trial detention is not authorized?"

33. Mr. DUBOIS (Canada) said that juveniles between the ages of 12 and 18 were dealt with by youth courts. They could be detained prior to trial on the same conditions as adults, i.e. if detention was necessary to ensure their attendance in court, or in the public interest, to protect society, or if there was a substantial likelihood that the accused might commit a criminal offence or interfere with the administration of justice.

> "V. (f) What is the proportion of indigenous persons to non-indigenous persons imprisoned in the Yukon and Northwest Territories?"

34. Mr. DUBOIS (Canada) said that the percentage of aboriginals in the prison population of the Northwest Territories and the Yukon was around 45 per cent, but that figure should be seen in relation to the total indigenous population of those territories, which was far higher than in any other region of Canada.

35. Mr. Dimitrijevic took the Chair.

36. Mrs. HIGGINS noted with interest paragraph 29 of the second periodic report (CCPR/C/51/Add.1), which stated that the Supreme Court had broadly interpreted the term "detained" to include "any person who submits or acquiesces in a deprivation of liberty in compliance with a direction of a police officer, in circumstances where the person reasonably believes that no other choice but compliance is available. This, of course, includes arrest." She wondered whether that broad interpretation was actually applied in all cases, since she knew of a case concerning a person detained for questioning

on his entry into Canada which suggested that the word "detained" had, on the contrary, been interpreted more narrowly. It was a question of some importance since it raised the issue of whether paragraph 1, article 10 of the Covenant would be applicable, for example, to arrested entry-seekers. At the same time, it would be useful to know whether police officers who had the power to arrest and detain at the point of entry were obliged to follow a code of conduct and whether there was a complaints mechanism open to individuals who claimed to be victims of arbitrary arrest.

37. Mr. WENNERGREN, referring to paragraph 9 of the third periodic report (CCPR/C/64/Add.1) and article 7 of the Covenant, which laid down that no one should be subjected "without his free consent" to medical or scientific experimentation, asked for further details on the provisions governing the obligation to obtain a person's consent before subjecting him to medical experimentation. Must written consent be obtained or would "presumed" consent be acceptable?

38. In some countries police officers were empowered to stop for questioning individuals who were, for example, causing a disturbance on the public thoroughfare and to keep them at the police station for several hours. If the procedure of detention at a police station existed in Canada, what guarantees were there to prevent abuse, was there any provision for compensation for arbitrary arrest, and did police officers empowered to take such action have precise instructions on how to conduct themselves?

39. Mr. EL SHAFEI, returning to the question of the large number of refugees waiting for a decision on their fate, said he understood the undeniable difficulties facing the Canadian authorities, but felt impelled to add his voice to those of other members of the Committee who had called for the procedure to be speeded up. Leaving people in a state of insecurity and uncertainty, sometimes for several years, was a cause of distress in which it was difficult to acquiesce.

40. Mr. WAKO, noting that according to article 10, paragraph 3, of the Covenant the essential aim of the penitentiary system was the reformation and social rehabilitation of prisoners, said that he saw nothing in Canadian law which corresponded to that aim. On the contrary, he felt that public safety was seen as the priority and he wondered whether in practice there might not be a conflict with article 10, paragraph 3.

41. Ms. CHANET was concerned about a provision of the Indian Act under which a school attendance officer could detain a child whom he had reasonable grounds for believing to be absent from school and take him to school using as much force as the circumstances required. She wondered whether such a provision could really apply to all children of school age, namely from six years of age, and under what conditions such measures would be taken.

42. Mr. ANDO, coming back to the maximum duration of pre-trial detention, asked whether the interval of eight days at most between arrest and indictment held good for all the provinces and all the jurisdictions or whether it varied. He would also like to know the average duration of criminal proceedings.

43. Mr. LOW (Canada), replying first to Ms. Chanet's question, said that he did not have to hand the information needed to describe under what conditions the measure she had referred to was carried out. In any case, he could give

her an assurance that the school attendance officers did not apprehend children as the provision she had quoted might lead one to suppose. All the same, it must be realized that the duty to ensure school attendance by all children was an important obligation laid upon States in a large number of international instruments.

44. Moving on to Mr. Wennergren's question on medical research and the principle of consent, he said that the Canadian authorities were currently preparing reports on the human rights implications of several medical/legal issues; the reports would be studied at the next meeting of ministers responsible for human rights. One of the reports related to medical research on human beings. The Canadian Medical Research Council had adopted detailed guidelines for such research, which the Council of Europe had used as a model in drafting its own bioethical standards.

45. The Canadian authorities attached great importance to the principle of consent, particularly informed consent, in other words where there was no risk of undue influence, given that doctors could put pressure on a patient to give his consent for experimentation to be carried out on him. Still, in the Government's opinion the standards were not wholly satisfactory and ought in particular to correspond more closely to the provisions of the Covenant; the whole issue would therefore be reviewed with the ministers concerned. No medical research performed on or in any way affecting a human being was authorized without the consent of the civil and, where necessary, penal authorities unless the person concerned gave his informed consent. In principle such consent was given in writing. So-called "presumed consent" was a kind of substitute consent in cases where a person was mentally incapable of giving his consent. A third party was then asked to do so in his name.

46. Conveying a person to a police station and detaining him there for preventive purposes was not provided for in the national legislation. The conditions under which a person might be arrested were laid down in the Criminal Code. While a police officer was fully entitled to challenge a person caught in the act of committing a misdemeanour, assuming that it was a serious misdemeanour, or an indictable offence, that would not apply to minor incidents of, for example, causing a disturbance at night. In all cases, arrested persons were detained in strict compliance with the law and brought before a magistrate very quickly. The basic principle of the relevant legislation was that an arrested person should be released rather than detained.

47. The eight-day time-limit stipulated by the Criminal Code, after which the detention order must be reviewed, was a federal obligation not subject to interpretations at provincial level.

48. On the subject of the detention of persons seeking entry into Canada, a ruling by the Supreme Court of Canada in 1985 had confirmed that any individual who was physically on Canadian territory had access to the same rights as residents.

49. The CHAIRMAN invited the Canadian delegation to reply to section VI of the list of issues to be taken up.

"VI. Right to a fair trial (art. 14)

(a) With reference to paragraph 70 of the second periodic report, please provide information concerning the guidelines for compensating persons for wrongful conviction or imprisonment and the experience to date in applying such guidelines at federal and provincial level.

(b) Is there in Canada a system of legal assistance for persons who cannot defray the costs of their trial?"

50. Mr. DUBOIS (Canada), replying to the first question, said that in March 1988 the federal and provincial ministers responsible for the administration of criminal justice had adopted a set of guidelines for compensating persons wrongfully convicted and imprisoned. It laid down minimum standards and the provincial authorities responsible for the administration of justice were free to extend the rules on compensation to cases not covered by those guidelines.

51. A number of conditions had to be fulfilled before compensation could be obtained, whether the injury sustained was financial or not. In the case of non-pecuniary damage (such as deprivation of freedom, impairment of reputation, disruption of family life, etc.), compensation should not exceed Canadian $100,000. There was no recommended limit, on the other hand, in the case of pecuniary damage, compensation being then decided according to the individual case. Provision also existed to indemnify the person concerned for the costs incurred in the compensation procedure. In recent years there had been three cases where persons had been wrongfully convicted: all three had been compensated, even before the adoption of the guidelines, and there had been no further case since.

52. In reply to the second question, he said that legal aid was considered an essential feature of the Canadian legal system and that legislation providing for it dated from the early 1970s. Legal aid services were basically the responsibility of the provincial authorities. The right of young offenders to retain counsel was also specifically protected by paragraph 1, section 11 of the Young Offenders Act. Quebec had had a similar law since 1972, allowing disadvantaged persons to receive legal assistance.

53. Mr. MAVROMMATIS raised the question of the independence of the judiciary in Canada. Apart from the three essential conditions enumerated in paragraph 53 of the second periodic report (CCPR/C/51/Add.1), he believed there were two other important considerations. The first was the way in which judges were appointed. Did the procedure described in paragraph 17 of the third periodic report (CCPR/C/64/Add.1) also apply to Supreme Court judges, and were they appointed by the Head of State or of the Government? Such details were most important, since the procedure for appointing both Supreme Court judges and lower court judges was generally speaking a very revealing criterion of the independence of the judiciary. Secondly, what were the current provisions in Canada regarding a judge's immunity, particularly what he could or could not do in the performance of his duties?

54. He also wondered about the procedure, referred to in paragraph 70 of the second periodic report (CCPR/C/51/Add.1), for compensating persons who had

been wrongfully convicted and imprisoned. Was there, in particular, provision in any given case for reinstating in the federal or provincial service an official who had been wrongfully convicted or imprisoned?

55. Mr. WAKO pointed out that under article 14 of the Covenant all persons were equal not only before the tribunals but also before the courts. Since there were several kinds of tribunal, each competent for specific issues, he would like further details as to guarantees of the independence and impartiality of the various judicatures, both those dealing with immigration or refugee issues and the Human Rights Tribunals, with particular reference to the conditions enumerated in paragraph 53 of the second periodic report (CCPR/C/51/Add.1). He also wished to know how those various judicatures complied with the criteria set out in article 14 of the Covenant.

56. Paragraph 3 (c) of article 14 stated that everyone charged with a criminal offence had the right to be tried without undue delay. Did the application of that provision give rise to any problems in Canada and, if so, what was done about it? Since the question concerned a large number of countries, an exchange of views between the States concerned on ways to deal with the difficulties arising from the slowness of legal procedures could be extremely useful.

57. He also asked for more details on the cases of wrongful conviction mentioned by the Canadian delegation. Had they been simply mistakes or was there evidence that there had been discrimination in the trials. He understood that the issue of discrimination in the administration of justice had been raised in Manitoba and Alberta in particular and that in several provinces the treatment meted out to Blacks apparently gave reason for concern. If such fears and allegations were well founded, he wished to know what measures the federal authorities had taken or intended to take to remedy the situation and do away with any element of discrimination in the administration of justice, in accordance with the provisions of the Covenant.

58. Mr. Lallah resumed the Chair.

59. Mr. POCAR wished to be more fully informed on legal aid. Was it granted for civil cases? He had noted that it was applicable in principle to criminal trials; but although article 14 of the Covenant did not expressly stipulate the right to legal aid in civil cases, there too legal aid was one of the guarantees of a fair trial. He had also noted that in Canada legal aid was essentially the responsibility of the provinces. According to the second periodic report (CCPR/C/51/Add.1, para. 289), New Brunswick's Legal Aid Act had provided for aid in civil cases between 1981 and 1988, but that had had to be stopped owing to lack of funds. Was that situation exceptional or had it arisen in other provinces, and if so why?

60. Mr. EL SHAFEI read out article 33 (1) of the Canadian Constitution Act, 1982, which stated: "Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter." For the information of the Committee, article 2 dealt with basic freedoms and articles 7 to 15 with legal guarantees. He wished to know whether that derogatory clause raised any problems and, in particular, whether it

did not prevent the courts from taking decisions in accordance with the 1982 Constitution Act, especially when they involved the legal principles which should render inoperative any provision inconsistent with the Charter. What was the current situation regarding such derogatory clauses in Canada?

61. Mr. ANDO had further questions about the independence of the judiciary, already touched upon by Mr. Mavrommatis. Although he was sure that the Federal Government was doing its utmost to maintain and strengthen the principle of independence, his understanding was that the judicial system varied from province to province, one following Roman law, for example, and another common law. Judges therefore might not necessarily be fully qualified to perform their functions in whatever province. He wondered whether the Canadian Bar Association's screening of candidates for judicial office involved different criteria and qualifications for each province; whether the various provincial systems were interconnected in any way or whether they were totally independent from one another; and whether federal and provincial court judges had any contact with one another. He also wished to know whether the Federal Government had considered or was considering setting up uniform minimum standards regarding the criteria for the independence of the judiciary. Lastly, he requested further details about the appointment procedure, the average length of a provincial judge's term of office, and the system applied in the Northwest Territories and the Yukon to protect the independence of the judiciary.

62. The CHAIRMAN, speaking as a member of the Committee, asked the Canadian delegation to clarify some points. First, concerning the independence of the judiciary, was it traditional in Canada for a retired judge no longer to have the right to practice at the bar? Secondly, did judges have specific pension rights? Thirdly, since judicial appointments at federal and provincial level raised the question of the ethnic origin of judges, were there any judges of Indian origin or who were immigrants from Asian or African countries, for example? Had the Federal Government considered that possibility? He considered that the exercise of judicial power should on no account be regarded as the prerogative of one specific ethnic group.

63. Mr. LOW (Canada) pointed out first of all, on the subject of the independence of the judiciary, that Canadian judges were very jealous of their independence. The appointment procedure for federal judges was governed by articles 96 to 100 of the 1867 Constitution Act, whereby the Federal Governor appointed the judges to the higher, district and county courts in each province, which obviously constituted a strong safeguard. Article 96 of the Act had been interpreted over the years as meaning that the competence of those courts could not be threatened or limited by measures which might be taken at provincial level.

64. With regard to judges' remuneration, it was for the Federal Parliament to legislate on the salaries, allowances and pensions of judges of the higher, district and county courts. The salaries and allowances of federal judges were fixed by law and could not be altered by administrative decision. The Executive was therefore in no way involved in determining judges' salaries.

65. As for judges' terms of office, those appointed at federal level could not be removed from their posts against their will before the compulsory retirement age of 75, except as the result of an independent judicial inquiry

and following a recommendation from the Judicial Council, which was made up of judges, in the form of a resolution addressed simultaneously to both Houses of Parliament, for his dismissal or, as it was sometimes called, his impeachment.

66. Although the appointment of judges lay with the Federal Governor, a group of lawyers and community representatives in each province drew up recommendations to the competent authorities on judicial appointments and gave their opinion on the candidates' qualifications.

67. While uniform criteria were applied to federal judges with regard to their appointment, term of office and salary, the conditions applying to provincial lower court judges, who were appointed by the local authorities, varied from province to province.

68. In reply to the question as to whether Canada followed the British tradition whereby a judge did not practise at the bar after retirement, he said, while that was indeed the tradition in Canada, the custom had evolved over the years and there were currently cases where retired judges assumed new functions in the judiciary.

69. Turning to the representativeness of the judiciary (its distribution in terms of gender, race or ethnic origin) he said that it had become a major consideration for the authorities responsible for appointing judges. The Federal Government could point with particular pride to the fact that in recent years two women had been appointed to the Supreme Court of Canada. He did not have precise data on the subject, but there was no doubt that the Canadian authorities were more aware than in the past of the need to ensure that the judiciary and the bar were truly representative of Canadian society.

70. In response to Mr. Wako's question on the equality of individuals and the guarantees of independence and impartiality not only before tribunals but also before the courts, he said that, as the members of the Committee were well aware, a society like that of Canada comprised an extremely large number of very diverse administrative authorities, some of which performed judicial functions. Generally speaking, it could be asserted that the Canadian authorities were strongly committed to the principle that the various judicatures, whether civil or criminal, should carry out their functions with fairness and should also be independent.

71. Canadian courts had, of course, the obligation to dispense justice fairly: if the great majority of the population was not convinced that the machinery of justice worked according to strict principles of fairness, it would be impossible to administer justice in the country. It was therefore not particularly significant whether the principles laid down in article 14 of the Covenant were fully applied in all the administrative tribunals, since the legislation was formulated to ensure that the judicial authorities strictly discharged their obligations in regard to procedure.

72. With regard to the slowness of justice, no State could claim that all cases were dealt with and all judgements given as fast as they could be, and Canada was no exception. Canadian courts gave priority to settling criminal cases quickly and the Supreme Court had thus been able to make up practically the entire backlog of criminal cases, particularly where the accused was under pre-trial detention. The Canadian Government would try to provide further information on criminal procedure in general in its next periodic report.

73. On the subject of the Marshall case, which had been mentioned, it seemed that the Committee was concerned above all at the fact that the person in question had been considered mainly from the angle of his being an Indian. He must make it quite clear that, following the case, measures had been taken in Nova Scotia to ensure that race, colour, religion, beliefs or national origin would have no influence on the judgements of the courts in the province. The same concern had led to the setting up of commissions of enquiry on the rights of the indigenous peoples, not only in Nova Scotia, but also in Manitoba and Alberta, in order to avoid any partiality in the administration of justice.

74. With regard to the cases in which the police had fired on Blacks who had broken the law, he instanced the fact that in the Toronto area, since 1988, the police had fired at four Blacks and one White and that one White had died following a confrontation with the police. In each case the policeman concerned had been arrested and had faced criminal prosecution following an enquiry carried out not by the actual police force concerned, but also by the interior provincial police. The concern aroused by such incidents had led to the setting up on 13 December 1988 of a task force on race relations and policing, whose commission included improving the training of police officers to make them better able to deal with the problems of minorities and improving recruitment practices so that minorities were fairly represented in the police. The task force had submitted a report in 1989, containing a large number of recommendations. A bill had later been tabled in Parliament and passed in June 1990, replacing the Police Act. New principles had thus been adopted regarding the minimum level of training, the representation of minority communities in police forces, and disciplinary measures to be applied in order to prevent the recurrence of that kind of incident.

75. In Canada, judges who decided not to take retirement had no special pension rights, but there was a generous pension fund for judges, for their spouses and for the spouses of deceased judges, who received about two thirds of their salary at the time of retirement.

76. Replying to Mr. Ando's question about the examination system for admission to the bar, he said that the Province of Quebec followed the civil law system, while the other provinces followed common law and barristers had to be registered at the bar of the province where they wished to practise. However, any member of a provincial bar could appear before the Federal Court of Appeal or the Supreme Court of Canada. In latter years some provincial bar associations had tried to restrict the inter-provincial mobility of judges, and that had given rise to concern within the Federation of Law Societies of Canada. Steps had therefore been taken to encourage links between bar firms in the various provinces and to set up bar firms competent at the national level. Nevertheless, each province still has its own examination system for admission to the bar and that there were not yet any exchanges between federal and provincial court judges. However, the constitutional obstacles and practices preventing the mobility of judges should be gradually eliminated.

77. Mr. EL SHAFEI asked whether the Canadian Charter of Rights and Freedoms contained provisions on the primacy of federal legislation over domestic legislation.

78. Mr. LOW (Canada) said that according to the Charter any law which might appear incompatible with the provisions of the Charter and was challenged must be repealed in accordance with article 52 of the Constitution Act. However, that principle did not apply if article 33 of the Charter was invoked during the five years for which the clause in article 33 (1) remained in force. Thus, in practice, the law could not be challenged in virtue of that particular provision of the Charter, although that did not mean that other methods could not be used to challenge the constitutionality of certain legal texts.

79. The CHAIRMAN invited the Canadian delegation to reply to the questions in section VII of the list.

"VII. Freedom of movement and expulsion of aliens (arts. 12 and 13)

(a) Please clarify the provisions governing the expulsion of aliens. How is the right of aliens to appeal against an expulsion order ensured in practice and does such appeal have suspensive effect?

(b) Are there any differences among the provinces in the legislation or the rules regarding freedom of movement and expulsion of aliens?"

80. In reply to question (a), Mr. DUBOIS (Canada) said that some categories of alien, particularly foreign residents, could appeal to the Immigration and Refugee Board, a course of action which automatically entailed the suspension of the expulsion order. All other aliens could request the Federal Court of Canada for a review of the decision and could also obtain a suspension of the expulsion order for 72 hours, or more if so decided by the Federal Court.

81. Replying to question (b), he said that there were no such differences and that expulsion came under federal law alone.

82. The CHAIRMAN invited the Canadian delegation to reply to the questions in section VIII of the list.

"VIII. Freedom of association (art. 22)

Please comment on the legislation in force in the Provinces of Ontario, Nova Scotia and Prince Edward Island which appears to establish a trade union monopoly contrary to paragraph 3 of article 22 of the Covenant."

83. Mr. DUBOIS (Canada) said that the Governments of Ontario, Nova Scotia and Prince Edward Island recognized three basic principles: first, any trade union must be representative of the employees concerned; secondly, machinery must exist whereby another trade union could in its turn become representative of those employees; and thirdly, the workers concerned should generally approve the approach adopted. A considerable number of provisions relating to collective agreements had been adapted to the needs and the specific situation of certain workers.

84. Mrs. HIGGINS believed that the Supreme Court in Ontario had recently had before it a case in which it had been stated that section 2 (d) of the Canadian Charter of Rights and Freedoms guaranteed only freedom of association

and not the right to collective bargaining. Article 22 of the Covenant, however, had a much wider scope, clearly guaranteeing to everyone the right to associate freely with others, "including the right to form and join trade unions". The Committee had not yet been able to look into the question of whether the right to strike and the right to collective bargaining were included in the freedom of association guaranteed under article 22 of the Covenant, but she would like to know whether section 2 (d) of the Charter meant that the right to collective bargaining was not guaranteed in Canada.

85. Mr. MYULLERSON shared Mrs. Higgins' concern. He would like the Canadian delegation also to provide further details on the question of union dues, briefly mentioned in paragraph 27 of the third periodic report.

86. Mr. LOW (Canada) said that the right to freedom of association in Canada did indeed include the right to collective bargaining and that there existed in all the provinces and territories, as well as at federal level, extremely precise legislation governing relations between employers and employees. Furthermore, the law stated that every individual was free not to belong to a trade union, but that a sum equal to the amount of union dues was deducted from each salary. In the Lavigne case, mentioned in paragraph 27 of the third periodic report, the complaint had concerned the fact that part of the funds deposited with the union had allegedly been used for "political" ends. Under the law it was also possible for any person who for social, religious or cultural reasons refused to join a trade union to declare himself a conscientious objector and to be exempt from paying union dues.

87. The CHAIRMAN said that the Canadian delegation would reply to the questions in sections IX and X of the list at the Committee's next meeting.

The meeting rose at 6.10 p.m.

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HUMAN RIGHTS COMMITTEE

Fortieth session

SUMMARY RECORD OF THE 1012th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 24 October 1990, at 10 a.m.

Chairman: Mr. LALLAH

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant

Canada (continued)

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second and third periodic reports of Canada (CCPR/C/51/Add.1 and 64/Add.1) (continued)

1. The CHAIRMAN drew attention to the list of issues to be taken up in connection with the second and third periodic reports of Canada (CCPR/C/51/Add.1 and 64/Add.1) and invited the Canadian delegation to continue its replies, beginning with section I.

I. Constitutional and legal framework within which the Covenant is implemented (articles 2 (2) and (3))

2. Mr. LOW (Canada) noted that Mr. Prado Vallejo has asked about the overall compatibility between the Covenant, the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights. When Canada had ratified the Covenant, it had reviewed its human rights legislation at the federal, provincial and territorial levels to ensure that it complied with the Covenant. The subsequent adoption of the Canadian Charter of Rights and Freedoms in 1982 had done even more to give effect to the spirit of the Covenant. However, in Canada's view, no single piece of legislation could implement all the provisions of the Covenant; it was essential to look at the whole of Canadian legislation, rather than at the Charter or the Bill in isolation.

3. Some members had asked about section 52 of the Charter of Human Rights and Freedoms of the Province of Quebec, which was equivalent to section 33 of the Canadian Charter of Rights and Freedoms and covered limitations on basic rights. Section 52 of the Quebec Charter was currently being contested in the courts, and he felt that it would be inappropriate to comment on it at present. His delegation would keep the Committee fully informed of any developments.

4. In reply to question I (b) of the list of issues, on progress in self-government by aboriginal groups, he said that there were approximately 1 million indigenous people in Canada, making up approximately 4 per cent of the population. Half of them were "status Indians", belonging to one of the 596 Indian bands; two thirds of them lived on Indian reservations. Of the rest, some 20,000 were Metis or non-status Indians, and the others were Inuits. There were indigenous communities in all parts of Canada, from isolated rural areas to the centre of large cities such as Vancouver.

5. The negotiations on self-government by aboriginal groups followed no fixed model. Some of them covered a single Indian band, while others covered several bands; some were based on the ownership of land, while others called for the provision of education or welfare services. The aim was to give aboriginal people control over events which directly affected them, while reserving their cultural identity, albeit within the framework of the Canadian Federation. The Government was not willing to concede full sovereignty, in the internationally accepted sense of the word, to the aboriginal groups, because it feared that such a step would result in the break-up of the Federation. A number of constitutional conferences had been held (see

document CCPR/C/51/Add.1, para. 10), but no agreement had yet been reached. However, other negotiations, covering education, health, social services, housing and economic development for aboriginal peoples, were continuing.

6. Members had asked about the Manitoba Emergency Measures Act. That legislation provided that, when declaring a state of emergency, the minister responsible should inform the population of the nature of the emergency or disaster and the area over which the state of emergency would apply. The state of emergency was limited to 14 days in the first instance, but it could be extended. A state of emergency had only been declared once, in 1989, when the northern half of Manitoba had been affected by major forest fires. Under a state of emergency, the authorities were empowered to make use of private property, control the movements of people and livestock and the use of public roads, and enter private buildings or land without a warrant. However, those powers were used in accordance with the provisions of the Canadian Charter of Rights and Freedoms, and he therefore felt that they were consistent with article 4 of the Covenant.

IX. Protection of family and children (articles 23 and 24)

7. Mr. DUBOIS (Canada), replying to question (a) about differences in the status of legitimate and illegitimate children, said that recent provincial and territorial legislation had eliminated all distinctions between children born in and out of wedlock, with a few exceptions, primarily related to cases where it was difficult to establish paternity.

8. Referring to the question of case law in the area of discrimination on the grounds of marital and family status, he said that, under federal, provincial and territorial law, the provision of benefits was often limited to certain classes of individuals, defined by marital status, separation, divorce or family relationships. It was not clear whether such classifications amounted to discrimination contrary to section 15 of the Canadian Charter of Rights and Freedoms. Section 15 did not specifically refer to discrimination on the grounds of marital or family status, and the Supreme Court had not yet had an opportunity to pronounce on the matter. There had accordingly been no conclusive developments in case law which would invalidate the information contained in paragraph 105 of the second periodic report (CCPR/C/51/Add.1).

9. Mrs. HIGGINS observed that the Canadian Charter of Rights and Freedoms did not seem to provide any specific protection for the rights of the family, and asked whether those rights were recognized in any other part of Canada's legislation. Was it true that recent changes in the laws governing immigration had deprived the dependants of immigrants who had already been admitted to Canada of the priority which they had previously enjoyed? If so, what were the reasons for that decision?

10. Mr. EL-SHAFEI asked how the immigration authorities would treat an application from members of an immigrant's family who had not yet joined the immigrant in Canada but were still abroad.

11. Mr. MAVROMMATIS requested further information about the recent amendments to the Divorce Act of 1985, under which a person might be refused a civil divorce if he or she had refused to co-operate in the removal of a religious barrier to the remarriage of the other spouse (see CCPR/C/64/Add.1, para. 28). Such a provision surely affected the individual's freedom of

choice, and it might also constitute discrimination between a purely civil marriage and a marriage contracted under both civil and religious law. It might also affect divorce cases in which the marriage had taken place abroad.

12. Mr. PRADO VALLEJO asked about the problems encountered in the break-up of families from the indigenous population. What measures had the Government taken to promote family unity among those groups, and had the problems encountered by both parents and children been overcome?

13. Mr. NDIAYE said that, according to some reports, the Canadian immigration service had threatened immigrant families that the behaviour of their children might affect their right to stay in Canada. He would welcome more information on that point.

14. Mr. LOW (Canada), replying to the question asked by Mr. Mavrommatis about the provisions of the Divorce Act, explained that an orthodox Jewish woman must obtain a special document from her husband before she could divorce, remarry and then have children who would be received into the Jewish faith. That particular religious authority had been used by some husbands forcefully to obtain a resolution of family property and custody disputes that was detrimental to the woman, since the husband could obtain a civil divorce from the ordinary courts while refusing to deliver the necessary document to his wife. The purpose of the legislation in question was to provide that where a person could withhold the right of a spouse to remarry within the confines of a specific religion, that person could not take advantage of the Divorce Act to remarry. It thus sought to avoid the application of undue pressure on a spouse to obtain the latter's agreement to an unfair divorce settlement in order to conform to the dictates of a religion.

15. In reply to Mr. Ndiaye's question, he submitted that any allegations to the effect that the Canadian immigration services had threatened foreign families and civilians were unfounded. Furthermore, if ever such threats were made, corrective action would be taken, and disciplinary measures and civil liability would ensue.

16. Regarding Mr. Prado Vallejo's question about the living conditions of indigenous children, he said that in the past those children had often been sent to residential schools outside their communities, where they had been cut off from their families, culture and language. Currently, however, there were 280 band-managed schools providing education to 36 per cent of indigenous students. Bands administered more than 75 per cent of elementary and secondary educational programmes. The proportion of indigenous people on the staff of federal schools had tripled over the past 20 years. There were 34 indigenous child and family service agencies covering one third of the bands in Canada. Efforts were under way to establish additional agencies designed and managed by indigenous people, which would provide services to all indigenous children and their families in their own communities. Indigenous-managed agencies provided culturally appropriate services and focused on prevention rather than protection. The percentage of indigenous children committed to the care of a child welfare agency had declined from 7.5 per cent in 1971 to 3.3 per cent in 1987/1988. That figure was, however, still very high compared with the national rate, which stood at about 0.7 per cent, and improvements in that area clearly needed to be made.

17. In response to Mrs. Higgins' question on family reunification, he said that priority processing abroad of dependants had already been initiated and was speeding up the resolution of cases in which family members residing in their countries of origin were enduring life-threatening situations or where minors were allegedly being abused or left unattended. The effectiveness of the measures taken in that respect would continue to be monitored. People who found themselves in life-threatening situations were handled on a priority basis, regardless of any tie to Canada. Officials of non-governmental organizations had open access to both the Department of Employment and Immigration and the Department of External Affairs of Canada, thereby ensuring that due attention was paid to urgent or particularly deserving cases. The suggestion that Canada was not attending to dependants abroad of people living in Canada was without foundation.

18. Mr. EL-SHAFEI, referring to the question of protection of the family and to article 18 of the Covenant, pointed out that the problem of minors joining religious cults without the consent of their parents placed the right to freedom of belief and religion in conflict with that of protection of the family and children. He wondered whether section 1 of the Canadian Constitution, which concerned limitations on freedoms and rights, could be used by the authorities to safeguard both those rights.

19. Mr. LOW (Canada) replied that there were no restrictions on the establishment or practice of a religion or on the operation of a Church, provided that none of the activities engaged in were illegal. The problem of whether parents or other authorities had any influence over the religious practices of minors was one faced by many countries. In Canada, parents had limited control in such cases, unless child welfare authorities intervened. Some parents had sought court rulings in cases where necessary medical attention was not being administered to a child because of religious beliefs. The courts had dealt with those cases by endeavouring to strike a balance between the right of citizens to freedom of religion and the need for the State to protect members of the community, particularly those in a situation of dependence.

X. Rights of persons belonging to minorities (article 27)

"(a) What factors and difficulties, if any, exist with respect to the implementation and enjoyment of the rights under article 27 of the Covenant?

(b) With reference to paragraph 63 of the third periodic report, please comment further on the content of the self-government proposal being negotiated with Indian communities and the current prospects for a successful outcome of those negotiations.

(c) How many members of Indian minority groups have been elected to the Senate or the House of Commons?

(d) What legislative measures are envisaged by the Canadian Government for making progress in the 'recognition of linguistic rights'? (See para. 59 of the third periodic report.)"

20. Mr. POCAR, referring to question (c) and allegations that indigenous people were under-represented in the House of Commons, asked whether it was true that they made up only 1 per cent of that body, whereas they accounted for more than 4 per cent of Canada's total population. He would also welcome information on their representation in the provincial governments. He asked whether the representation of indigenous people depended on the electoral system or on other factors and what action had been taken by the Government in that respect.

21. Mr. LOW (Canada) replied that the Canadian Government did not employ a system of proportional representation. There were 295 seats in the House of Commons, 3 of which were held by indigenous people. In the Senate, the latter held 3 out of 111 seats. While he was unable to provide full information about the situation in the provinces and territories, it should be noted that in recent elections in the Province of Manitoba, indigenous people had obtained 3 out of 57 seats in the legislature. In the Northwest Territories, where they formed a majority of the population, indigenous people held 16 out of 24 seats in the legislature. The issue was not merely one of proportional representation, but also of whether or not, in connection with article 25, all people had equal access to public service and political office. He would endeavour to ensure that in Canada's next periodic report, the matter was given fuller treatment.

22. Mr. DUBOIS (Canada), referring to question (a), said that Canada was a country with a multicultural heritage and an evolving demographic make-up. Clearly, the full implementation of the rights covered by article 27 in such a society required laws that sought to regulate conduct, in order to protect minority communities from prejudicial actions. Canada's second and third reports went into some detail on the multiplicity of laws that sought to ensure such a course. More important than restrictions and obligations, however, were the promotional and educational programmes and other initiatives that advanced the attitudinal changes and socialization that made minority rights a reality.

23. Substantial resources were devoted to that objective in Canada, but in periods of economic restraint rigorous prioritization was necessary, and spending and other controls on programmes might have the effect of limiting progress to a greater extent than was desirable. Periods of economic slow-down sometimes gave rise to social and community tensions, and Canada, like any other country, had had and probably would in the future have its share of such difficulties. The effectiveness of its programmes, their ability to do more with less, their success in permeating the consciousness of Canadians and adjusting their collective way of thinking to enhance the respect due to the minorities were put to the test in times like the present. When they did not succeed fully, the country could only fall back on its laws and the effectiveness of its administration of those laws.

24. Turning to question (b), he said that the objective of community self-government negotiations was to develop a new relationship between Indian communities and the Federal Government by working out practical new arrangements for Indian government at the community level. Such arrangements were given effect through specific legislation which would replace the Indian Act for that community. The negotiation process was based on three general principles: the new arrangements should increase local control and

decision-making; the negotiation process should be flexible to accommodate the social, cultural and political diversity of Indian communities across Canada; and the new arrangements should lead to greater accountability by Indian governments to their own people rather than to federal authorities.

25. A broad range of topics might be addressed, including those basic to government, such as institutions and procedures of government, membership, legal status and capacity, land and resource management, and financial arrangements. Negotiations might also include other key aspects of community life such as education, health, social and welfare services, culture, environment and the administration of justice. Substantive negotiations were under way on eight projects, involving 30 bands. An additional 15 projects involving 29 bands were at the framework negotiation stage, and about 170 bands were at the initial development stage.

26. In reply to question (d), he said that in 1988 Parliament had adopted the new Official Languages Act, described in paragraph 143 of the second report. That Act had come into force on 15 September 1988 and represented significant progress in recognition of the linguistic rights of all Canadians in elaborating on the principles contained in subsections 16-20 of the Charter. The Act gave equal status to the English and French languages in all parliamentary and government institutions and applied to all federal institutions throughout the country. Among the major features of the Act were provisions on language of work and language of service to the public. It provided judicial recourse for breaches of the Act, and maintained and enhanced the office and functions of the Commissioner of Official Languages. The Act also recognized the commitment of the Canadian Government to enhancing the vitality and supporting the development of English and French linguistic minority communities in Canada.

27. The Federal Government had also initiated and maintained important programmes to preserve and enhance the heritage languages of Canada's communities. Those programmes provided for financial support and technical assistance to the many communities in order to enable them to retain their linguistic heritage. Programmes had also been developed to support the languages of Canada's aboriginal communities. For example, $16 million had been contributed since the mid-1980s to the Government of the Northwest Territories to assist in an ambitious series of initiatives to advance the use of the sixth aboriginal language used by the population of the Territories. Other programmes were well entrenched, and pursuant to legislation in the Northwest Territories those languages had been given official status.

28. A bill was currently pending in Parliament to establish a Canadian Heritage Languages Institute, which would serve as a repository for data relating to such languages. At the request of the aboriginal people, specific reference in the bill to aboriginal languages had been removed. Nevertheless, on the adoption of that legislation, the Institute would be available to aboriginal communities who wished to take advantage of its services.

29. Mr. AGUILAR URBINA said that in various parts of the second and third reports, and in the introductory and other statements, reference had been made to visible minorities. He wondered what that meant, and whether there were also invisible minorities in Canada? If so, who were they, what was the difference between the two groups and how were the rights of the invisible minorities recognized?

30. Paragraph 142 of the second periodic report made reference to "many minority groups in Canada" but paragraph 143, referring to the Official Languages Act, made specific mention of the "participation of both official language communities" and "the promotion of the two official languages". He wondered whether those languages had official status in the Northwest Territories and whether the indigenous languages were guaranteed similar status. He would also like to know whether the aboriginal peoples, as Canadian citizens, could communicate with the Canadian authorities in their own languages throughout the country.

31. From the third periodic report, and particularly the constitutional cases mentioned, he noted that the administrative authorities had been taxed with attitudes contrary to indigenous rights. He wondered what measures had been taken to ensure respect for those rights and what the criticisms had actually been.

32. Paragraph 69 of the third report referred to the Canadian Heritage Languages Institute, without specifying which heritage languages were involved, and he wondered whether it meant that English, French and the 53 indigenous languages were all covered. The second report, in the section on Manitoba, referred to the adoption of many measures for the protection of minorities, without giving any examples. What measures had been taken? In the section on Newfoundland in the same report, reference was made in paragraph 318 to the protection of minority-language educational rights, but nothing was said about the ways in which such protection was assured. He wondered what difficulties there were in applying the law, if any.

33. Referring to paragraph 468 of the second report, he noted that the Department of Parks, Recreation and Culture Act had not been mentioned in the third report. In view of the recent events in Oka, he wondered whether that Act had been incorporated into Quebec's legislation, how it affected the rights of minorities and what recourse the minorities had to ensure that their rights were upheld. He would also like to know why civil rights had been suspended in Oka without any parliamentary debate, why the National Defence Act had been invoked rather than the Emergency Measures Act and why it had been necessary to use the National Defence Act against a minority group. In fact, what was the difference between the two Acts?

34. Mr. NDIAYE sought further clarification of the programme of assistance to minorities. As a national of a developing country, he had often wondered whether the concept of a cultural minority was not a false one, based on a racist view which resulted in the marginalization of the minority groups concerned. Assistance programmes tended to put minority groups outside the national system and exclude them from the country's social, economic and technological development. He therefore wondered whether Canada's assistance programme contained measures, in addition to mere assistance, that would ensure the minority groups' participation and full incorporation into Canadian society.

35. Mr. MYULLERSON endorsed Mr. Ndiaye's question on the assistance programme. As to the 1985 amendment of the Indian Act, he wondered how the changes had been received by the various Indian bands and what their reaction to the changes had been. On the subject of the Multiculturalism Act, he asked how the notion of culture was interpreted, whether in a narrow sense or in a wider sense that included economic aspects, and also what cultures were covered.

36. In connection with the concept of minorities in Canada, he inquired how the concept was applied. For example, were French-speakers considered to be a minority, or were English speakers regarded as a minority in Quebec, in which case did they enjoy special rights under article 27 of the Covenant? With regard to the conflict between the authorities and the Mohawks in Quebec, he asked about the legal reasons underlying the conflict. What were the prospects for a solution and how close was a solution at the present time?

37. Mrs. HIGGINS, also referring to the unfortunate events in Oka, asked whether, with the benefit of hindsight, the invocation of the National Defence Act had been sufficient in terms of the consequences for the restriction of rights, for example, the severance of communications by the Mohawks with the Canadian and Quebec governments, and denial of access to the press. Was it now felt that derogations or invocation of other limitations had been necessary?

38. Referring to the revision of the Indian Act as a result of the Committee's views expressed in communication 2393, she wondered, following Mr. Myullerson's question, whether there had been any perceived difficulties consequential upon the fact that the Indian rights were restored to the first generation only, and whether there had been any problems as a result of that decision. Lastly, she inquired why the Indian Act was excluded from the Canadian Human Rights Act and what the implications of that exclusion were.

39. Mr. WAKO asked whether there was any relationship between indigenous treaty rights and the self-government proposals and settlement of land claims. Would the self-government proposals or settlement of land claims abolish certain rights belonging to indigenous peoples under the treaty? And if so, was there any guarantee that the indigenous communities would have the same bargaining powers as the Federal Government in negotiating a new arrangement? Would a new arrangement affect indigenous treaty rights?

40. In relation to internal self-determination and the fact that the various bands would henceforth be able to manage their own social, political and economic affairs, he noted that the natural resources of the indigenous areas had not been mentioned. He asked who had control of those resources and whether they might be a shared responsibility.

41. Paragraphs 10 and 144 of the second periodic report referred to a possible constitutional amendment guaranteeing a right to aboriginal self-government, and paragraph 10 contained an assurance that efforts to that end were continuing. The matter had not been taken up in the third report, however, and he wondered how vigorous those efforts were. Furthermore, as the most recent constitutional conference appeared to have been held in 1987 and as the Prime Minister had stated his commitment to convene a further First Ministers' Conference on that issue, he wondered whether such a conference had in fact been convened and whether the issue was being pursued diligently. Given the acknowledgement that Canada was a multicultural society the Constitution should reflect that fact, and he wondered what consideration was being given to the point. Furthermore, were the indigenous peoples subject to limitations or were they recognized as a people over and above their cultural minority groups?

42. Mr. WENNERGREN said that quite clearly access to land lay at the core of aboriginal rights, since without land the aboriginals could not enjoy their own culture. Did the aboriginals have access to or ownership of land? According to section 18 of the Indian Act, the reserves were held by Her Majesty for the use and benefit of the respective bands for which they were set apart. Did the Crown therefore own the land? If so, had it been expropriated from private owners and had it ever been owned by Indian bands? How far did the land claims go back and how was ownership of property by aboriginals regarded?

43. It had been stated the previous day that the land on which the Oka golf course was to be laid out contained a Mohawk graveyard and that the land in question had been purchased. By whom and from whom had it been purchased? And why did land claims disputes take so long to go through the courts. Did it mean that the negotiations took a long time or that a good deal of historical research into ownership was necessary? It had also been stated that a sum of money might be awarded to speed up the proceedings; more information on that matter, too, would be appreciated.

44. Mr. PRADO VALLEJO, referring in particular to paragraph 63 of the third periodic report, asked what was the status of the negotiations, what proposals had been made and what agreements had been reached.

45. Turning to paragraph 67 of the same report, he welcomed the approval by the Federal Government of a Northern Political and Economic Framework and asked how the framework had been established, particularly with regard to the transfer of power and responsibility for development programmes. He also inquired how territorial claims had been settled, how the framework was being implemented and what success had been achieved to date.

46. Mr. WENNERGREN said that he wished to ask a number of questions which were not covered in the list of issues and related to articles 19 and 21 of the Covenant. The first concerned freedom of expression; in many Commonwealth countries, the dissemination of "false news" was a crime, and he wondered if the same was true in Canada. Also on the subject of freedom of information, he had seen a number of references in the reports to freedom of access to information (CCPR/C/51/Add.1, para. 95, and CCPR/C/64/Add.1, para. 25). Was the right of access to information enshrined in the statutes, or merely in case law? Did everyone have access to the information held by public authorities, and could an individual take copies of information if he or she wished? Were there any categories of information to which access was denied?

47. He also had a question about the right of peaceful assembly (Covenant, art. 21). In the supplement to its initial report (CCPR/C/1/Add.62), the Canadian Government had stated that the right of peaceful assembly must be balanced against the right to make use of public property. What was considered to be "public property" and did Canada feel that it was consistent with article 21 to deny the use of public property for a peaceful assembly?

48. Mr. LOW (Canada), replying to the questions put by Mr. Wennergren, said that the dissemination of "false news" was an offence under the Canadian Criminal Code. However, it was a difficult offence to prove, and in at least one sensational case, a retrial had been ordered because of doubts about the way in which the trial had been conducted. The result of the retrial would

probably be available by the time Canada presented its next report. The phrase "false news" referred to information which the offender knew to be false and which caused harm to an individual; it did not, therefore, cover false information which was disseminated in the belief that it was true.

49. The area of access to information was covered by the laws on freedom of information and the laws on privacy. A commissioner for access to information had been appointed. Anyone could obtain information held by government institutions on payment of a very small fee, provided that the information was not detrimental to federal, provincial or international relations, did not concern a current criminal investigation, and was not protected by the Privacy Act. There were sometimes complaints of delays or reluctance on the part of officials to release information, but an applicant was free to appeal to the commissioner for access to information in the event of a dispute. The Privacy Act stated that information relating to individuals which was held by a government institution could only be released to that individual. For instance, information obtained from an individual's tax return could not be released to anyone except that individual, not even to the police. The Act provided for the appointment of a commissioner for privacy.

50. Regarding the question of freedom of assembly, the idea that people could be prevented from gathering in public places might seem alarming. However, lack of restrictions on assembly in certain places, such as airports, could lead to the undue obstruction of normal activities. In 1982, not long before the adoption of the Charter, the Supreme Court of Canada had ruled on a case concerning the requirement to obtain a permit to hold a march in the city of Montreal. The Court had held that it was reasonable for the municipal authorities to require such a permit since they needed to know when large assemblies would take place in the streets in order to take effective security measures. That decision had drawn a great deal of academic criticism on grounds that it was inconsistent with the right of peaceful assembly and it would undoubtedly come under further review in the future.

51. Mr. POCAR wondered whether the decision in the case of Osborne v. The Queen, which pertained to article 25 of the Covenant and was not covered in the list of issues, applied to public servants in general or was restricted to a specific category of public servants. Did the case have any bearing on the right of a public servant to stand for public election and was a public servant required to resign in order to become a candidate?

52. In connection with the case of Fraser v. Public Service Staff Relations Board, in which the Supreme Court of Canada had held that limits might be imposed on the right of public servants to speak on public issues in the interest of maintaining an impartial public service, he called in question the interpretation of the term "reasonable restrictions" found in article 25 of the Covenant, and that of the restrictions on freedom of expression mentioned in article 19, and wondered whether the issue raised did not pertain to the latter article rather than to article 25. He asked whether the decision of the Court was confined to public issues relating to the special functions of the public servant or included all public issues. In the latter case, the decision would seem to be inconsistent with the Covenant unless national security or public order was threatened.

53. Mr. LOW (Canada) said that one of the protection sagainst discrimination on grounds of political opinion or belief in relation to the public service in Canada was that the public service operated on the principle of merit. The absence of political partisanship, provided for in section 33 of the Public Service Employment Act, was a convention adhered to by all public servants to ensure the neutrality and professionalism of their work. However, public servants other than deputy ministers could apply for leave of absence in order to seek electoral office. Such applications must be made to the Public Service Commission, an agency which reported directly to Parliament, and were granted unless it was decided that the political campaign would be detrimental to the applicant's role in public service. In practice, leave was generally granted and the applicant allowed to return to public service if his bid for election was unsuccessful. Attending political meetings or contributing money to a candidate or a party was also permitted, except at the highest levels. The Canadian system of public administration, which was predicted on impartiality, had thus succeeded in alleviating the tension that could exist between the political participation of public servants and the need to safeguard government administration. It also ensured that public service did not subject employees to concerns of political bias or inappropriately favour individuals on the basis of political opinion. The Supreme Court of Canada was currently examining existing legislation to determine whether it was adequate under the Canadian Charter and article 25 of the Covenant.

54. In the Fraser case, in which the Supreme Court had had to weigh freedom of expression against the requirements of public service, partisan expression of opinion by a public servant had been deemed to cause prejudice, in fact and in perception, to the impartiality of public service. The defendant in that case was a public servant who, in 1980 and 1982, had waged a well-publicized vitriolic campaign against the Government, which had been seeking to secure adoption of the Canadian Charter. The Supreme Court had found that, in the circumstances, the Government was justified, as an employer, in expecting that its employees should not engage in that kind of activist campaign against one of its major policies.

The meeting rose at 12.15 p.m.